

the army

LAWYER

HEADQUARTERS, DEPARTMENT OF THE ARMY

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"What's Good for the Goose, Is Good for the Gander"—Court-Martial Procedure in Light of Franks v. Delaware

MAJ Stephen A. J. Eisenberg, Criminal Law Division, TJAGSA

One proposition has been well settled for some period of time in both civilian and military criminal jurisprudence. Essential to the responsibilities of the official issuing a search warrant or authorization is the task of determining whether sufficient facts are presented in the affidavit supporting the application to establish probable cause. In contrast to the foregoing, up until the recent pronouncement of the Supreme Court in the case of Franks v. Delaware,2 there has been significant controversy surrounding the question of whether an affidavit which appears sufficient on its face can be attacked on the grounds that the information is incorrect to one extent or another. To restate the problem and put it in perspective, it has been permissible for defense counsel to attack the sufficiency of the information presented by informants on one hand, but the propriety of an attack on the validity of information presented by law enforcement officials has been questionable.

The first hint that a substantial examination could be carried out was manifested in Rugen-

dorf v. United States.3 The Court squarely faced the issue in Franks. The petitioner was convicted in a Delaware state court on rape and associated charges. Evidence essential to the State's case were items of clothing and a knife found in the defendant's apartment pursuant to a search warrant. Defense counsel attacked the validity of the affidavit which supported the warrant on the grounds that misstatements were included in the document, not due to inadvertence, but in bad faith. The motion to suppress was denied by the trial court, and affirmed on appeal by the Supreme Court of Delaware. The State's attorney advanced throughout the proceedings, among other arguments, that state law precluded such an attack. The Supreme Court reversed.⁵

Prior to the decision in Franks, courts have addressed the propriety of attack on the affidavit supporting the warrant in a mulititude of different ways. State courts have run the gamut from permitting challenges to the veracity of the affidavit to outright prohibiting such challenges. Federal courts of appeals have generally allowed an accused to litigate the viability of the affidavit, but the standards which have been established have been rather broad ranging. The permissible bases for overturning a search due to a faulty affidavit have

extended from an intentional inaccuracy to a non-intentional, but incorrect statement which was material to a finding of probable cause.⁸ There has been a dearth of military case law concerning the issue.⁹ Of all those cases which recognize the existence of a viable legal position which undermines the probable cause foundation, only one case enumerates a clear standard under which attack should be allowed and sustained.¹⁰

Franks¹¹ now firmly establishes the rule that upon the fulfillment of certain preconditions, the Fourth Amendment¹² ensures to the accused the right to attack the truthfulness of a warrant affidavit. In arriving at this conclusion the Court carefully scrutinized and weighed a number of conflicting considerations¹³ finally deciding that there was no difference between the sufficiency of the affidavit and the integrity of it.14 Nevertheless, the Court strictly circumscribed the extent to which a challenge could be launched. At the outset, in order to receive a full hearing on the accuracy of the information detailed to the authorizing official, the defense counsel must initially make a substantial preliminary showing of certain facts. The Court further held that the demonstration be accomplished by way of an offer of proof in which counsel: delineated that portion of the

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affidavit which was false; supported the assertion by a statement of reasons; and additionally proffered sworn or otherwise trustworthy affidavits of witnesses. If the latter were not included in the offer, an explanation of the absence therefrom must have been set forth.¹⁵

More specifically, what facts must be demonstrated during the offer of proof? The question has three facets and defense counsel must address each one of them. They are:

- (1) Who made the misrepresentation? Franks permits challenge only of the affiant's statement and "not of any nongovernmental informant." ¹⁶
- (2) What was the nature of the misrepresentation, i.e., was the misinformation deliberately given; made in reckless disregard for the truth; negligently proferred; or was it innocently stated? The Court's holding only applies to information in the first two categories. Specifically excluded from review are negligent or innocent mistakes.¹⁷
- (3) Finally, what effect does the mistake have on the finding of probable cause? An essential predicate to a full hearing is that the falsity be material to a finding of probable cause. "If, when material that is the subject of the alleged falsity or reckless disregard is set to one side, there remains sufficient content in the warrant affidavit to support a finding of probable cause, no hearing is required." 18

Once defense counsel has established the requisite information in (1)-(3) above through a "substantial" showing, then the accused is entitled to a full hearing on the question. If the same information is proven by a preponderance of the evidence, then the warrant must be set aside and the fruits of the search excluded from evidence. 19

As indicated, military law is far from clear on how practitioners can expect to find the problem resolved at courts-martial. The Supreme Court's holding in *Franks* merely set minimum standards to which jurisdictions must adhere. The Court of Military Appeals can, if it sees fit, set aside that which it considers to be a parochial set of criteria for attacking the superfi-

cially sufficient warrant and, in lieu, hold the government to a more stringent standard. Alternatives possible might include holding the government accountable for: intentional, but non-material, misstatements; negligent, material, misrepresentations; or misstatements by any servicemember under the theory that within the military community there is very little difference between a military law enforcement officer and the military citizen-informant.

What about federal courts and the position they are adopting vis-a-vis Franks? It is still too early to discern any recognizable trend throughout the federal judiciary, although the U.S. Courts of Appeals for the Fifth and Sixth Circuits have given an indication as to the direction they are going to follow. The Fifth Circuit in the case of *United States v. Astroff*²⁰ reversed a panel decision which invalidated a warrant due to a negligent, material misrepresentation. Astroff held the Franks standard dispositive regarding those criteria to be followed. The Sixth Circuit has indicated it is similarly inclined to follow Franks and set aside its established rule. In United States v. Luna²¹ it had held an intentional, non-material misstatement would void a warrant. In the recent case of United States v. Barone²² the Court advanced the notion that, "... the defendant must now look to Franks v. Delaware for the correct standard when seeking to attack a search warrant on this basis."23 In both cases the accused has lost a preferred position from which to challenge the efficacy of governmental conduct. Indeed, some commentators have suggested, "... the 'limitations' imposed on the procedure for quashing a false affidavit made the Franks opinion a boon to trial judges and to prosecutors. . . "24 They suggest the Supreme Court recognized this fact in the following statement: "Nor, if a sensible threshold showing is required and sensible substantive requirements for suppression are maintained, need there be any new large-scale commitment of judicial resources; many claims will work out at an early stage. . . . "25

The practitioner in the court-martial arena must be particularly sensitive to the implications involved in litigating affidavit validity. There are a manifold number of issues which must be addressed and resolved by military appellate courts for the first time. First, and foremost, is a standard which must be erected as a guidepost. At this writing, counsel have no firm rules to be constrained by. Government and defense counsel alike have a unique opportunity to create a record replete with legal, policy and philosophical bases upon which to predicate rules supportive of their respective client's positions.²⁶ Moreover, the field is wide open concerning a myriad of other issues. Two such questions are as follows:

- 1. What quantum of information from the total information available to the affiant must be presented to the authorizing official in order not to be construed as a misstatement²⁷ (e.g., CID agents have received three out of four valid tips from informant X and relay this information to commander; CID agent does not impart to commander that informant has been convicted of two courts-martial, has been released from three civilian jobs under questionable circumstances, and has been unable to acquire a security clearance).
- 2. In Franks, the Court indicated that the rule enunciated only applied to the statement,"... of the affiant not of any non-governmental informant."²⁸ What of the situation where the undercover law enforcement officer imparts the requisite falsity to another agent, the latter appearing as the affiant? Is the chain broken and the affidavit valid?

The aforementioned are only designed to spark the imagination of counsel concerning unresolved, potential problem areas. The only bridle on counsel is the limit of their creative powers. It may very well be that Franks²⁹ has not solved a problem, but instead has opened Pandora's box as the progenitor of a long line of cases a la Aguilar.³⁰

FOOTNOTES

- ² 23 Crim. L. Rep. (BNA) 3179 (28 June 1978).
- 3 376 U.S. 528, 531-532 (1964).
- 4 23 Crim. L. Rep. (BNA) 3179 (28 June 1978).
- 5 77
- See Franks v. Delaware, 23 Crim. L. Rep. (BNA) 3179, 3185-86 (28 June 1978).
- ⁷ See, e.g., United States v. Carmichael, 489 F.2d 933, (CA7 1973) (en banc).
- See, e.g., United States v. Thomas, 489 F.2d 664, (CA 5 1973).
- United States v. Corkill, 2 M.J. 1118 (C.G.C.M.R. 1976); United States v. Turck, 49 C.M.R. 49 (A.F.C.M.R. 1974); United States v. Carlisle, 48 C.M.R. 71 (C.M.A. 1973); United States v. Salatino, 48 C.M.R. 15 (C.M.A. 1973); United States v. Sam, 46 C.M.R. 124 (C.M.A. 1973); United States v. Ness (C.M.A. 1962).
- 1º See United States v. Turck, 49 C.M.R. 49 (A.F.C.M.R. 1971) which adopts the standard set forth in United States v. Carmichael, f.7, supra.
- ¹¹ 23 Crim. L. Rep. (BNA) 3179 (28 June 1978).
- 12 U.S. Const. amend. IV.
- 13 Franks v. Delaware, 23 Crim. L. Rep. (BNA) 3179 (28 June 1978).
- 14 Id.
- 15 Id.
- 16 Franks v. Delaware, 23 Crim. L. Rep. (BNA) 3179, 3184 (28 June 1978). See also United States v. Carlisle, 48 C.M.R. 71, 75-76 (C.M.A. 1973) [Judge Duncan concurring].
- ¹⁷ Franks v. Delaware, 23 Crim. L. Rep. (BNA) 3179, 3184 (28 June 1978).
- 18 Id.
- 19 Id. at p. 3180.
- 20 578 F.2d 133 (CA5 1978) (en banc).
- 21 525 F.2d 4 (CA6 1975).
- ²² 23 Crim. L. Rep. (BNA) 2463 (30 August 1978).
- 23 Id.
- 24 Steele and Betsford, Search Warrants: A Critical Analysis of the Four Corners Rule, 14 Crim. L. Bull. 5, 410, 427 (1978).
- 25 Id.
- See Franks v. Delaware, 23 Crim. L. Rep. (BNA) 3179, f. 7, (28 June 1978).

¹ Spinelli v. United States, 393 U.S. 410 (1969); Aguilar v. Texas, 378 U.S. 108 (1964); Jones v. United States, 362 U.S. 257 (1960).

²⁷ Cf. United States v. Thomas, 1MJ397, 402 (CMA 1976).

28 Id., p. 3184.

29 Id.

30 Aguilar v. Texas, 378 U.S. 108 (1964).

Discharge Clemency After Appellate Review

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Prior to August 1976, petitions for clemency were filed on several occasions just as the command was preparing orders executing punitive discharges affirmed on appeal. In each case, the soldier had been restored to duty following his serving the approved confinement, and in some cases his performance of duty while pending appellate action merited clemency action.

These several instances led to three realizations within the Staff Judge Advocate office. First, while soldiers whose punitive discharges have been affirmed are advised by their appellate counsel that they can apply to their current general court-martial convening authority for clemency. many do not really understand what this means, or how to effect such consideration. Second, if a soldier who is restored to duty elects to soldier rather than take excess leave, there is a good chance that he will be successfully rehabilitated to the extent of fulfilling his original service obligation, i.e., that he will soldier his way to an Honorable or General discharge. Third, there exists no mechanism for evaluating a soldier with an affirmed punitive discharge to determine if he has been rehabilitated and should receive clemency. Discussions on this matter revolved around two basic considerations—is clemency consideration following appellate affirmation of a punitive discharge desirable, and what procedure should be used?

It is Army policy with respect to military prisoners that commanders should, consistent with discipline and the preservation of good order, mitigate, remit or suspend the unexecuted portion of a sentence when they deem such action is merited and will contribute to rehabilitation². Further, in a Volunteer Army, with an emphasis on training costs, it is important to achieve maximum service from each individual enlisted. Following confinement at the Disciplinary Barracks, which has a variety of rehabilitation programs, a soldier can either return to duty or go on excess leave pending completion of appellate review. Many soldiers who go to the Disciplinary Barracks are young (18-20 years of age), and the rehabilitation programs do much to change attitudes and teach responsibility. If, following this confinement, the soldier elects to return to full duty status, the chance is good that he has undergone some rehabilitative experience. Therefore, it was concluded that any soldier restored to duty at Fort Campbell pending the completion of appellate review of a punitive discharge, who accepted restoration and did not go on excess leave, should be considered for clemency action if there was evidence of rehabilitation.

The matter of procedure raised several basic issues. With the recent trend in judicial decisions concerning due process in actions affecting personal rights, the first step was to decide the nature of the contemplated action. Clemency, especially after appellate review, is a purely discretionary power vested in the convening authority which is not (like some discretionary actions) subject to review for lack of arbitrariness; it is a matter of grace, not of right. Therefore, the due process requirements of notice, hearing and counsel are not appropriate. In fact, the least desirable result would be an adversary proceeding. Furthermore, the soldier has not only had his day in court, but has had at least one careful review by an appellate court. Greater due process is not possible. On the other hand, a decision based solely

on a review of a paper file is inadequate for assessing rehabilitation. Therefore, it was concluded that, in addition to review of the soldier's MPRJ and record of trial, input would be obtained from the soldier's enlisted chain of command and through interview of the soldier. This information should then be evaluated by personnel having experience in interviewing and assessing subjective factors, and transmitted to the convening authority through his principal legal advisor, the Staff Judge Advocate. Thus, a panel was suggested, being composed of the Deputy SJA (to provide legal expertise in reviewing the records and recommending specific clemency actions), the Post/ Division Command Sergeant Major (to provide expertise in assessing character), and the local confinement facility commander (to provide expertise in correctional programs and assess individual reactions to experiences at the Disciplinary Barracks).

Discussions with Major General John A. Wickham, Jr., the Commander, on these matters resulted in his signature on the following directive to the Staff Judge Advocate:

- 1. In order to insure the retention in the service of rehabilitated soldiers who, having been sentenced by a court-martial to a punitive discharge, have served the confinement portion of their sentence and have been restored to duty at Fort Campbell pending appellate review, you are directed to provide me, prior to any final action upon affirmance of the punitive discharge, with a clemency recommendation.
- 2. To provide the proper basis for such a recommendation, you are also directed to establish and supervise an informal Clemency Board composed of your deputy, the correctional officer assigned to the ACF and the Division/Post Command Sergeant Major. This board will review the soldier's performance since his restoration to duty through interviews with his supervisors and commanders, review of records and interviews with the individual concerned. You will direct the board that their function is advisory, that they are to perform this function informally, and that the indi-

vidual concerned will be allowed to know and rebut any adverse comments by his supervisors and commanders. The provisions of AR 15-6 will not apply.

Since institution of this clemency program, fourteen soldiers were evaluated for clemency. Nine of them were granted clemency (TABLE A) and five were denied clemency (TABLE B). The average soldier granted clemency was a first-offender having an adjudged bad conduct discharge (BCD). Those denied clemency were either soldiers pending a dishonorable discharge or having an established pattern of misconduct. Interestingly, the statistics in the attached tables were not assembled until thirteen of the cases had been decided, and no guidelines (e.g., BCD v. DD or number of Article 15's) were ever developed for or by the panel. In only one case did the grant of clemency prove ill-founded.

The procedure is simple. When notified that appellate review of a court-martial under Fort Campbell's jurisdiction has been completed, the Military Justice division determines if a punitive discharge is involved and whether the soldier is present for duty at Fort Campbell. If both of these conditions are present, the record of trial and all allied documents are given to the Deputy SJA who reviews these documents and the soldier's MPRJ. Then, the Post/Division CSM is notified of the individual and his present unit, and he discusses the soldier's duty performance and off-duty conduct with his NCO's and immediate commanders, obtaining their opinions as to the soldier's rehabilitation and potential to complete his period of enlistment satisfactorily. Then the Deputy SJA, with either the Post/Division CSM or the ACF commander, or both, interviews the soldier to obtain a personal evaluation of his current feelings about discipline, his court-martial and subsequent confinement, his plans for the future (to see if he has any positive motivations or goal orientation), and his desire to complete his enlistment in an honorable manner. This is an interview conducted in a relaxed office atmosphere, without an adversary situation, attempting to probe attitudes; it is not a board "hearing." The ultimate question put to the soldier is why does he feel the Commander should grant clemency in his case. Following the interview, and private discussions between the three panelists, a brief report and recommendation is submitted, through the Staff Judge Advocate, to the Commander.

Clemency, if granted, usually takes the form of a suspension of the discharge for six months, or until the soldier's adjusted ETS date, whichever occurs first. This provides a formal period of probation during which the soldier knows it is up to him to prove, under close observations, tht he can in fact soldier. If the soldier is past his adjusted ETS date, then clemency would be remission of the punitive discharge and discharge with either a General or Honorable discharge.

What is the result of this program? For eight soldiers, it has meant the chance to come back from a serious mistake and to prove they have changed and can be good soldiers. It has given them, in the form of a discharge under honorable conditions, a reward for maturing and

changing their attitudes toward discipline and law, sending them into civilian life with a positive attitude toward good citizenship. More importantly, each one automatically got considered for this clemency. They were not left on their own, to decipher a letter from their appellate counsel or to rely on a busy defense counsel to completely develop a clemency petition. From a command standpoint, it makes sense to get a full enlistment from a rehabilitated soldier, and to show other soldiers that it is possible to "soldier back" and have that achievement recognized by the Army.

FOOTNOTES

- ¹ Article 74(a), Uniform Code of Military Justice, 10 U.S.C. § 874 (a) (1970); paragraph 100, MANUAL FOR COURTS-MARTIAL, UNITED STATES, 1969 (Rev. ed.).
- ² Paragraph 6-19f(3) Army Regulation 190-47, Military Police, The United States Army Correctional System (1 Oct. 1978).

Table A: Cases In Which Clemency Granted

Case	Offense(s)	Type of Discharge	Age	Previous Record
1.	Assault w/knife; larceny (under \$50)	BCD	19	None
2.	Transfer of drugs	BCD	20	None
3.	Assault; threat	BCD	24	1 SPCM
4.	Indecent liberties	BCD	23	None
5.	Disobey orders	BCD	23	3 Art 15's
6.	Possession & sale of marihuana	BCD	20	None
7.	3 assaults	BCD	19	None*
8.	False claims; false official statement	BCD	29	None
9.	Possession of marihuana	BCD	22	None

^{*}suspension later vacated for misconduct.

8 Table B. Cases In Which Clemency Denied

Case	Offense(s)	Type of Discharge	Age	Previous Record
1.	Mail theft	DD	22	None
2.	Possession of marihuana for sale	BCD	21	6 Art 15's
3.	Disrespect; threat	BCD	22	5 Art 15's
4.	Larceny of phone services	BCD	20	6 Art 15's
5.	Larceny; possession of marihuana; assault; wrongful approp. of vehicle; breaking			
	arrest; threat	DD	20	None

An Even Funnier Thing Happened at the Forum

Lieutenant Colonel Robert M. Nutt, Chief, Contract Law Division

The time, 13 October 1978. The place, Washington, D.C. The event, a new Contract Disputes Act1. The forum, CONGRESS. Everyone wants to know what's happenin'!? What has happened to this reasonably defined, time tested, judicially construed disputes procedure, which provided a quick administrative contract remedy, avoided vexatious litigation and gave reasonable protection to the contractor, who could always appeal unfavorable board decisions to the Court of Claims. Do we still have it under the new "Contract Disputes Act of 1978"? Maybe not!

This new legislation, signed by the President on 1 November 1978, provides some procedural and substantive changes.

Section 3 keeps the Tucker Act waiver of sovereign immunity found at 28 U.S.C. § 1491, that is, it applies to any express or implied government contract. Having said that, what are the significant changes in this law over current practice?

Section 5 adds a fraudulent claims provision that subjects a contractor to liability for claims against the government when he cannot support a part of the claim, and that failure is based on misrepresentation or fraud. The dollar deduction is equal to the amount of the "overstatement."

Section 6 applies to contracting officer decisions. Formerly, only disputes of fact arising under the contract were subject to the decision of the contracting officer. Section 6 enlarges this authority and requires the contracting officer to decide all claims relating to a contract, which includes not only those arising under, but those that breach the contract as well. In addition, time limits are placed on contracting officers to force decisions quickly. For example, any claim under \$50,000 must be decided within 60 days from the time the contracting officer receives it from the contractor. If the claim is more than \$50,000, the contracting officer may decide the claim immediately or he must tell the contractor when to expect a decision, but in any event the claim must be decided within a "reasonable time," whatever that may mean. If the contracting officer unduly delays, the contractor may obtain new relief by asking the Agency Board of Contract Appeals for an order directing that the contracting officer issue a decision. Of course, if the contracting officer fails or refuses, that "decision" is itself appealable, a codification of existing case law.2

Section 7 enlarges the time for filing an agency board appeal from 30 days to 90 days, still measured from the date of receipt which

should be the same as current counting procedures.³

Section 8d enlarges the jurisdiction of agency boards of contract appeals to decide any claims relating to a contract and it may permit them to "grant any relief that would be available to a litigant asserting a contract claim in the Court of Claims." In essence, the agency boards may, by this section, take over the breach of contract function of the Court of Claims. Section 8f creates a \$50,000 accelerated procedure available at the sole election of the contractor. Finality attaches to these board decisions on fact questions in the same fashion as under the Wunderlich Act4 unless they are found to be "fraudulent, or arbitrary or capricious, or so grossly erroneous as to necessarily imply bad faith, or if such decision is not supported by substantial evidence" under section 10b.

Appeals from agency boards may be by either party if perfected within 120 days from their receipt of an adverse agency decision under §8g (1) A and B. Government appeals will be transmitted to the Court of Claims by the agency head, with the "prior approval of the Attorney General," for judicial review.⁵

Section 9 requires each agency board to establish a non precedent setting, quick resolution procedure for claims of less than \$10,000, again at the sole election of the contractor. Decisions on these little cases must be rendered within 120 days from the contractor's election to use it. Decisions on the \$50,000 accelerated procedures are required within 180 days from the date the contractor elects to use it. The significant difference between the two quick fixes is that the little cases may not be appealed or set aside for any reason except fraud.

Section 10 provides the most significant change to existing law. Under current practice if a contractor has a dispute of fact arising under the contract, his failure to timely appeal under the exhaustion of administrative remedies doctrine forever bars any judicial review. Section 10(a)(1) changes that exclusionary rule and permits a true election of forums for any contractor who chooses not to seek relief from an agency board. The contrac-

tor may, "in lieu of appealing" under section 8 of the new act, bring his suit against the government in the Court of Claims—this, "notwithstanding any contract provision, regulation or rule of law to the contrary. "Under §10 (a) (3) the contractor may have his direct access at any time within 12 months from the date of receipt by him of the contracting officer's decision. Here, of course, the rules of the Court of Claims apply at trial. These are somewhat more strict than rules traditionally applied in agency board hearings where the stated standards of admissibility of evidence are "relevancy and materiality," and discretionary relaxation of traditional rules for admitting documents.

Under §10 (c) the Court of Claims may review agency board decisions. The Judicial review standards normally applied have limited the court to a review of the administrative record only. The new law permits the Court to decide, remand or retain the case and take such additional evidence or action as may be necessary for final disposition of the case, overruling Bianchi.

Section 11 gives agency board subpoena, discovery and deposition powers, which they have previously only been able to use on a "good guy," voluntary, basis. For example, at the Armed Services Board of Contract Appeals. rules 14 and 15 encourage voluntary discovery and interrogatories but contain no coercive authority to compel the parties to appear or produce documents if unwilling. An unwieldy procedure is available under 5 U.S.C. §304 (1976), but is geographically limited in scope. 10 Under it, a witness can only be compelled to come to the federal district court where he is found or resides. While this may have been practical when the statute was enacted on 14 February 1871,¹¹ it is not practical today at agency boards which fashion federal common law of government contracts on a nationwide basis. Thus, this section gives agency boards their long awaited power to act effectively on the evidence available for their cases.

Section 12 allows interest on claims of contractors from the date the contracting officer receives the claim until it is paid. This changes

current contract and DAR language which limits payment of interest on contractor claims to the period from the contractor's notice of appeal until final determinations of amount a significant increase in the interest bearing time. ¹² There will be a change to the DAR clause which may, however, keep the deduction of interest bearing time for contractor caused delay in the process. Finally, the concurrent jurisdiction which the Federal District Courts enjoyed with the Court of Claims has been repealed. ¹³

The significant effect of all of this is time. An agency board proceeding will immediately take 60 days longer than current practice. Experience demonstrates that contractors usually wait until the last day of the appeal period to write that long awaited letter stating "I appeal." Thus, we can expect agency board appeals to be filed on the 90th rather than the 30th day. If the contractor misses this date, all is not lost for he may still file under the direct access provision of section 10 in the Court of Claims. But that gives him nine more months because now he has a year from the contracting officer's final decision to commence his suit. Thus, on the 365th day (366th in leap years) the contractor may sue, adding another year for resolution of the case.14

The new act becomes effective within four months of 1 November 1978. This means that on or about 1 March 1979, new clauses, new agency board rules and new internal procedures will be fashioned to implement the changes. But even without them, section 16 provides that "Notwithstanding any provision in a contract made before the effective date of this Act, the contractor may elect to proceed

under this Act with respect to any claim pending then before the contracting officer or initiated thereafter."

Any contract in being could be subject to the claims procedure of the Contract Disputes Act of 1978. Lawyers, beware!

FOOTNOTES

- ¹ Contract Disputes Act of 1978, Pub. L. No. 95-563, 92 Stat. 2383 (1978) (to be codified in 41 U.S.C. §§ 601n-613).
- ² Sheridan-Murray, ASBCA No. 7615, 1962 BCA ¶2121.
- ³ Pyramid Van and Storage, ASBCA No. 14257, 69-2 BCA ¶7952.
- 441 U.S.C. § 321 (1970).
- ⁵ This legislatively overrules S&E Contractors, Inc., v. United States, 406 U.S. 1 (1972) which had judicially determined that the government had no appeal rights from its own adverse boards' decisions.
- ⁶ United States v. Holpuch Co., 328 U.S. 424 (1946).
- ⁷ Appendix A, Armed Services Board of Contract Appeals, Part 2, Rule 20, *Hearings*, Defense Acquisition Regulation (1 July 1976).
- * United States v. Bianchi, 373 U.S. 709 (1963).
- e Id
- ¹⁰ 5 U.S.C. §304 (1976); The Chemithon Corp., GSBCA No. 4525, 77-1 BCA 12436.
- ¹¹ Ch. 51, § 1, 16 Stat. 412 (1869–1871).
- 12 Defense Acquistion Reg. § 7-104.82 (1 Jul 1976).
- ¹³ 28 U.S.C. § 1346(a)(2) (1970; § 14a, The Contract Disputes Act of 1978.
- 14 See Nutt, "A Funny Thing Happened on The Way to the Forum", The Army Lawyer, July 1978 at 19, 20.

Military Correspondence: The Young Lawyer vs. The Beastie

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Somewhere between the tense sunrise of the first day of JAG School Basic Class 1 and the peaceful glow of retirement years 2 comes the first dramatic clash between law-school logic and military experience: Army correspondence. No man knows the genesis of this unique

beast,³ though many have tracked it to its dark lair,⁴ and floundered in its apocalyptic jaws.

This article is dedicated in memoriam to the legions of perplexed young attorneys who, having found out what the law required, failed to select the appropriate military correspondence format for their learned epistles. Instead of providing firm-rooted guidance to able commanders, inquisitive civilians or impressionable recruits, their wit and wisdom has been relegated to the bottom of the "hold" basket of some forgotten word processing center or hardhearted administrative technician's desk. To all those whose creative genius has thus suffered from the slings and arrows of outrageous uniformity in military correspondence, these humble observations on the nature of the beast are submitted.

Disposition Forms. Many Army lawyers labor under the misapprehension that DF's were so named because of their function of disposing of things: decisions, concurrences, etc. Nothing could be further from the truth. All significant decisions or dispositions of things are made on routing and transmittal slips, because they are marked with a clear prohibition against such actions.7 DF's, on the other hand, are named for their deleterious effect on the disposition of the person who tries to use the unyielding black lines of the form to contain the fullblown import of a "legalese" concept. Consider, for example, the subject of a typical Military Law Review article: "The Proposed Codification of Government Immunities and Its Effect on Economic Privileges Extended United States Forces Abroad."8 Now try to fit that simple heading into the subject block of a DF. See? Your disposition is changing already.

Before leaving Disposition Forms, one cannot resist noting that a large box composed of heavy black lines is a format easily recognized in civilian newspapers as an obituary.

The Military "In" and the Military "Will." The military correspondence beast has a peculiar flair in the areas of spelling and grammar. Any civilian attorney would recognize "enc." at the foot of a letter as indicating that an enclosure is included in the envelope; few would agree that "Incl" means the same thing. While most dictionaries 10 permit the word "inclose" as a mutated variation of the word "enclose," the military has pounced upon this concession with unprecedented glee.

Not content with this beachhead, Army correspondence regulators have struck boldly to advance the cause of the letter "i" with respect to the word "indorsement." Again the dictionary 11 lamely tolerates this variant spelling, but the Army has enshrined it as the acceptable method of acknowledging an official letter. Further, a writer in the Army must "indorse" such a letter, even though his indorsement indicates total disagreement with the basic communication. Thus not only the common spelling, but also the common meaning has been usurped at the behest of the beastie.

Another uniquely military correspondence anomaly is the use of the future indicative 12 mood, as in "you will do thus and so." Those Army lawyers without prior military experience first learn of this traditional military grammar upon receipt of orders which predict that, at a certain date and time, "the above officer will report for active duty as a member of the Judge Advocate General's Corps." This incredible power of foreseeing the future is not really based upon any psychic ability,13 but rather upon a firm grasp of the realities of the attorney job market 14 and/or the law of AWOL.¹⁵ Fortunately, because of the newlyminted JAG officer is seldom in a position to predict that anyone else will do anything at any time, he or she is unlikely to find the military future imperative to be a significant problem in generating correspondence.

Comments. Comments are used exclusively to remark upon the change in someone's disposition brought about by the use of the disposition form (see above). Even though an attorney may feel that a preceding comment was exceptional in its content and analysis, he may not "indorse" it, even though he is free to "comment" upon its merit. Conversely, however, if a preceding indorsement is defective and clearly the product of a sick mind, the attorney must "indorse" it without a "comment."

Space precludes a thorough accounting of the idiosyncrasies of military correspondence. It is sufficient to note that the beast exists, has devoured many, and threatens all young attorneys. In the words of Lewis Carroll:

Beware the Jabberwock, my son!
The jaws that bite, the claws that catch!
Beware the Jubjub bird, and shun
The frumious Bandersnatch!¹⁵

FOOTNOTES

- Army Reg. No. 351-2, The Judge Advocate General's School, U.S. Army, para. 2a (19 May 1975). "The School's mission is to—(a) Develop, provide and conduct military law instructor (sic) for personnel of the Judge Advocate Legal Service..." (emphasis added). The above-cited regulation provides authority for resident instructors, but none for resident instruction. It is arguable, therefore, that the JAG Basic Class, like all other resident JAG School classes, is unauthorized. However, rumors that the School's Nonresident Instruction Division will soon seize control of the institution have been greatly exaggerated.
- ² "Retirement A Peril to Nation," ARMY TIMES, Vol. 38, No. 36, Apr. 3, 1978, at 1.
- 3 HOLY BIBLE, Revelation 13:1.
- ⁴ Army Reg. No. 340-15, Preparing Correspondence (January 1968).
- ⁵ See "File Cabinet Accessories," Sears, Roebuck and Company, 1978 Summer Catalogue, at 1024.

- W. Shakespeare, HAMLET, act III, scene i.
- 7 "DO NOT use this form as a RECORD of approvals, concurrences, disposals, clearances, and similar actions." Optional Form 41, Routing and Transmittal Slip (Rev. July 1976).
- ⁶ Coleman, The Proposed Codification of Government Immunities and Its Effect on Economic Privileges Extended United States Forces Abroad, 72 MIL. L. REV. 93 (1976).
- See The Washington Post, Obituary Section, for the current list of Pentagon beastie's victims.
- 10 See, e.g., Webster's Seventh New College Dictionary 423 (© 1971).
- 11 WEBSTER, supra at 428.
- ¹² See C. Long, Indicative Apodases with Subjunctive Protases in the Unreal Conditional Sentences of Livy and Tacitus (1901).
- ¹³ Psychic Lessons, Human Behavior, Vol. 7 at 51 (Fall, 1978).
- 14 Do You Really Want To Be A Lawyer?, CHANGING TIMES, Vol. 32 at 45-47 (7 October 1978).
- ¹⁵ UNIFORM CODE OF MILITARY JUSTICE, art. 86, 10 U.S.C. § 886 (1970).
- ¹⁶ L. CARROLL, THROUGH THE LOOKING GLASS, ch. 1.

American Bar Association Supports Career Program For Judge Advocates

The following article is a news release from the American Bar Association Standing Committee on Lawyers in the Armed Forces, 1155 E. 60th, Chicago, IL 60637; telephone (312) 947-3876. The complete text of the resolution mentioned in the first paragraph is available from the Committee on request.

At the ABA Annual Meeting in August, its House of Delegates approved updated standards for the training, recognition, and compensation of judge advocates. Updating was done by the ABA Standing Committee on Lawyers in the Armed Forces. The resolution has been sent to majority and minority members of appropriate Congressional committees, as well as to the Secretaries of Defense, Transportation, Army, Navy, and Air Force, the Joint Chiefs of Staff, and commandants of the Marine Corps and Coast Guard.

A similar career program for Reserve and National Guard judge advocates will be considered by the Committee at its November 17-18 meeting in Fort Hood, Texas. This career program would indicate the need and increased use of Reserve and National Guard members and would suggest how to deal with problems such lawyers may have in their dual capacity as civilians and military officers.

The Committee is also studying problems of a sole practitioner called to active duty for extended periods of time and the effects of such service on his or her legal practice.

At the November meeting, plans will also be made for a seminar in Dallas August 10-11, 1979, similar to the seminar held last August in New York City for Reserve and National Guard lawyers from all over the country. The

1978 seminar featured presentations on "Military Law Update" by MAJ Steven A. J. Eisenberg of the Army JAG School and "Call-up Problems" by LCDR James B. Ginty, JAGC, USNR. Togo West, General Counsel of the Navy, was luncheon speaker.

Other speakers included Robert N. Martin, Jr., MGEN, USAFR, and Edward D. Clapp, BGEN, USAR, Jack N. Bohn, BGEN, USAR, and Kenneth K. Bridges, CAPT, USN Commandant of the Naval Justice School, Newport, Rhode Island.

Another Committee project is obtaining detailed information from states as to requirements leveled on Service lawyers who are located outside their home states. It is recognized that the Services require judge advocates to remain in good standing with their local and state bars even though they do not practice law within the locality. The Committee hopes to sponsor action which will support payment to Service lawyers for these costs.

Members of the Standing Committee are Penrose L. Albright, RADM, JAGC, USNR, of Alexandria, VA; Thomas R. Brett, COL, USAR, of Tulsa, OK; Donald H. Dowling, CAPT, JAGC, USNR, of Hartford, CT; Hugh H. Howell, Jr., RADM, JAGC, USNR, and Roy L. Mims, MAJ, USAFR, both of Atlanta; George S. Prugh, MGEN, USA-Ret., of San Francisco; Robert S. Span of Los Angeles; and Thomas M. Stewart, CAPT, JAGC, USNR, of Boulder, CO.

Advisory Committee members are Wilton B. Persons, Jr., MGEN, TJAG, Department of the Army; C. E. McDowell, RADM, JAG, Department of the Navy; Walter D. Reed, MGEN, TJAG, Department of the Air Force; James P. King, BGEN, Director, Judge Advocate Division, U.S. Marine Corps; and Clifford F. DeWolf, RADM, Chief Counsel, U.S. Coast Guard.

This is but one of several ABA standing committees concerned specifically with the problems of lawyers in the Service. It is part of the overall ABA program to provide support for these members of the bar in uniform.

Criminal Law Item

Criminal Law Division, OTJAG

1. Paragraph 2-8, AR 195-5, provides that evidence will be disposed of as soon as possible after it has served its evidentiary value. In addition, it requires CID evidence custodians to submit staff judge advocates requests for final disposition instructions regarding certain evidence. The procedures in all staff judge advo-

cate offices should be reviewed to ensure that timely reponses to such requests are being provided. Delay in the disposition of dispensable evidence results in unnecessary administrative burdens and, in some cases, the owner being denied the use of his or her personal property for an unreasonable period of time.

Word Processing Equipment

Developments, Doctrine and Literature Department, TJAGSA

The Judge Advocate General's Corps is cooperating with The Adjutant General in a project to reduce the current administrative typing survey, equipment review, and documentation requirements imposed by AR 340-8 on prospective users of word processing

equipment (WPE). The project is called Standard Army Automated Support Systems (SAASS).

The Adjutant General's Word Processing Division is developing a plan to implement

SAASS in activities such as field legal offices, which perform the same type function or exhibit a high degree of uniformity among workload, organization and mission requirements.

The Judge Advocate General has referred this project to the Commandant, TJAGSA, for action. A brief description of this project was presented at the 1978 World-Wide JAG Conference. TJAGSA's effort will focus on streamlining methods of justifying, selecting and acquiring WPE. In addition to this effort, TJAGSA will attempt to determine which of the numerous commercial name brands of

available WPE will best perform work found in the "typical judge advocate office."

Information and suggestions from judge advocate users of WPE will be most helpful in determining what the best system might be. WPE users are asked to provide TJAGSA with their thoughts, comments, and any available data which would be useful in this effort.

Please forward responses by 31 January 1979 to:

Commandant The Judge Advocate General's School, Army ATTN: JAGS-DD Charlottesville, VA 22901

Administrative and Civil Law Section

Administrative and Civil Law Division, TJAGSA

The Judge Advocate General's Opinions

1. (Absence Without Leave) Servicemember Could Be Charged With Time Lost For Civilian Confinement UP 10 U.S.C. § 972(2), Despite Dismissal of The Charges, Where He Was AWOL At The Time Of The Civilian Arrest. DAJA-AL 1978/2975, 7 July 1978. OSA, ABCMR requested an opinion whether an applicant was charged erroneously with time lost for 23 days spent in civilian confinement based on a charge of armed robbery which ultimately was dismissed.

The applicant's discharge had been upgraded to general UP of the Special Discharge Review Program on 25 May 1977. His new DD Form 214, Report of Separation From Active Duty, however, still reflected 45 days of time lost. This was based in part on an entry in his DA Form 20, Personnel Qualification Record, indicating he was AWOL from 3 to 16 May 1971 and confined by civil authorities from 17 May to 9 June 1971. Thus, he apparently was AWOL at the time he was arrested by civilian authorities and charged with the robbery.

TJAG noted that normally a member is assessed time lost only for pretrial and post-trial

confinement culminating in a final conviction where the absence absence is without proper authority. But time lost also may be assessed UP of 10 U.S.C. § 972(2) in the absence of a final conviction, provided there is an administrative determination that the absence in confinement was without proper authority or due to the member's misconduct. In the absence of evidence to the contrary, TJAG followed the presumption of administrative regularity with respect to the entries on the DA Form 20, concluding that these entries supported a conclusion that the time lost was due to his own misconduct.

2. (Contributions and Gifts) Volunteers In The Retiree Volunteer Service Program And The Army Community Services Program Must Execute A Waiver Of Any Claim For Compensation. DAJA-AL 1978/2016, 9 March 1978. A section of the Anti-Deficiency Act (31 U.S.C. § 665(b)) prohibits the acceptance of voluntary service for the government. The purpose of this provision is to preclude deficiencies resulting from claims for services rendered for which there was no prior authorization. The Adjutant General asked The Judge Advocate General if the execution of a waiver of any claim for com-

pensation by volunteers in the Retiree Volunteer Services Program and the Army Community Services Program would satisfy the prohibition against accepting voluntary service for the Government.

It was The Judge Advocate General's opinion that such a waiver would only be effective if the services involved tasks for which compensation is not fixed by statute. Any job subject to classification by the Civil Service Commission under the Classification Act (5 U.S.C. §§ 5101-5515) is considered to have compensation fixed by statute.

The prohibition against accepting voluntary services does not extend to utilizing volunteers for positions which would normally be funded by nonappropriated funds, except for those positions subject to the Prevailing Rate System (5 U.S.C. § 5342(a)(2)(B)). [See Interim Change 2-1 to AR 28-1, 2-1 to AR 608-1, and 1-1 to AR 608-25 for a copy of the Waiver of Claims Statement to be executed annually by volunteers in Recreation Services, Retiree Volunteer Service Program, and Army Community Services Program.]

3. (Information and Records, Filing of Information) Use Immunity Aspect Of The Exemption Policy Concerning Alcohol Abuse Established In January 1975 Not Applicable To 1973 U.C.M.J., Article 15, Punishment Using Alcohol Abuse Information. Such Information Should, However, Be Deleted From Documents Supporting NJP Action Under Current Policy of AR 600-85. DAJA-AL 1978/2504, 4 May 1978. In October 1973, an NCO received a field grade Article 15 for urinating on his barracks and assaulting a lower ranking SM. In the forwarding correspondence recommending the field grade Article 15, the unit commander indicated that the NCO had been enrolled voluntarily in an Antabuse Program in 1972. The battalion commander imposed reduction from SGT to SP4. On appeal, the reduction was suspended and no further action was taken.

SM filed an ABCMR application requesting that the Article 15 be rescinded and associated

material removed from his official record. He contended he was prejudiced in the disposition of the charges by virtue of his voluntary participation in the alcohol abuse program and that reference to that participation in military records was prohibited by AR 600-85.

The Judge Advocate General expressed the opinion that the Article 15 was legally sufficient and properly filed in the OMPF. As to whether references to ADAPCP participation should be deleted from the related documents, TJAG expressed the following conclusions:

- (1) The exemption policy of the Alcohol and Drug Abuse Prevention and Control Program (ADAPCP) never has provided transactional immunity from disciplinary action for acts of misconduct commited concurrently with alcohol or other drug abuse (see AR 600-85).
- (2) The the exemption policy, including the use immunity aspect was not established with respect to alcohol abuse until 7 January 1975. Thus, using alcohol abuse information to support the Article 15 was not improper in October 1973.
- (3) In October 1973 there were no alcohol abuse patient record confidentiality or privacy laws restricting disclosure of EM's alcohol abuse problem and rehabilitation program client status. Moreover, it did not appear that then applicable restrictions on disclosure of medical records were violated. Most of the information was not derived from medical records. To the extent information of ADAPCP client status originated from medical records, there were then no applicable restrictions on redisclosure. Also, the battalion commander had a valid need to know this relevant and then nonexempt information to assess Article 15 action. Accordingly, the ADAPCP client information was properly disclosed to the battalion commander in the Article 15 documentation.
- (4) However, action is required to correct records, whenever created, now maintained in violation of ADAPCP confiden-

tiality policy (AR 600-85, para. 1-23b). Individuals now authorized access to SM's official personnel records generally have no official need to know of his former alcohol abuse problem and participation in an alcohol rehabilitation program. Accordingly, it was The Judge Advocate General's opinion that such references must be deleted from documents supporting the October 1973 Article 15. The protected information should not be destroyed, however. The deleted material should be retained in case there is an official need for it in the future. The material should be placed in the Restricted Fiche of SM's Official Military Personnel File, thereby preventing its unauthorized disclosure.

(5) Although not then erroneous, the Article 15 would have been defective if imposed after expansion of the exemption policy to cover alcohol abuse due to the use of now-exempt information. The policy extant at the time SM was punished pursuant to Article 15 would have exempted a program volunteer guilty of illegal drug abuse, but did not exempt alcohol abusers. Whether this warrants retroactive application of the expanded policy and complete removal of SM's Article 15 as a matter of justice, are matters to be determined by the ABCMR in the exercise of its discretion.

4. (Information and Records, Release and Access) Creation Of A Record Is Not Required To Respond To A FOIA Request, DAJA-AL 1978/3159, 13 July 1978. A FOIA request was submitted for a listing of all personnel having a particular church affiliation who were assigned to a specific military installation. The Judge Advocate General advised that, if substantial computer reprogramming or extensive manipulation of the data base were necessary to retrieve the information, such action could constitute creation of a new record. A record need not be created to respond to FOIA requests. The Judge Advocate General also was of the opinion that disclosure of the information would constitute a clearly unwarranted invasion of personal privacy.

- 5. (Information and Records, Release and Access) Draft Revision Of Regulation And Allied Papers Constitute Predecisional Memoranda And Are Exempt From Release. DAJA-AL 1978/2874, 5 June 1978. A Freedom of Information Act request was submitted for an "advance copy of revised AR 210-7" and all written material pertaining to the revision. With the exception of two documents, the request was denied by the Judge Advocate General in his capacity as the Initial Denial Authority. Both the draft regulation and the allied comments, opinions and recommendations were considered predecisional memoranda exempt from release (5 U.S.C. § 552(b)(5) (1976)). Consistent with legislative history and judicial interpretation. The Judge Advocate General concluded that withholding was necessary to protect the free exchange of ideas within the agency prior to the issuance of a decision.
- 6. (Information and Records, Release and Access) The Home Address Of A Former Servicemember May Not Be Disclosed Without Consent. DAJA-AL 1978/2604, 30 May 1978. A private attorney representing the family of a civilian contractor's employee killed in an automobile accident requested the home address of a former servicemember who had been driving the opposing automobile. Ostensibly, the former servicemember was being sought as a witness for a workmen's compensation claim. Allied papers indicated, however, that a complaint in a civil suit had been prepared which named the former servicemember as a defendant. The Judge Advocate General concluded that, because no compelling public interest would be served by disclosure, the home address could not be released without the consent of the former servicemember.
- 7. (Information and Records, Release and Access) Unsolicited Disclosure Of Suspected Criminal Conduct To State Authorities Found Not Appropriate. DAJA-AL 1978/2481, 8 May 1978. A servicemember who was suspected of sexual abuse of a child on an area under exclusive federal jurisdiction was administratively separated UP of Ch. 10, AR 635-200. An unsolicited disclosure of this in-

formation to state authorities could not be made under the law enforcement routine use exception to the Privacy Act, 5 U.S.C. § 552a, because state authorities had no responsibility to investigate or prosecute criminal offenses on the enclave. Under such circumstances, disclosure may be made only if the records systems notice for the record in question authorizes such disclosure as a routine use or if a compelling public interest would be served by disclosure even though an invasion of personal privacy would result.

8. (Information and Records, Systems of Records) A DA Form 751 Is Not A "Record" Under Particular Circumstances. DAJA-AL 1978/2154, 30 Mar. 1978. Under the particular circumstances of use, it was the opinion of The Judge Advocate General that DA Forms 751, "Telephone or Verbal Conversation Records," did not constitute a "record" within the meaning of the Freedom of Information Act, 5 U.S.C. § 552. Use and retention of the forms was solely within the discretion of the employees. The forms were prepared personally by the individual involved, and they were used exclusively as memory aids. Circumstances which could dictate a different result would include whether mandatory use of the forms was required, retention was for a specified time, use of the forms in a manner other than as an extension of memory, and circulation of the forms to persons other than the preparers.

9. (Insurance) The Department of Army May Recognize A Particular Association As A Nonprofit Military Associations For The Conduct of Educational Programs On Army Installations. DAJA-AL 1978/3191, 21 July 1978. The Adjutant General recently inquired whether there was any legal objection to Headquarters. Department of Army recognizing a particular association as a nonprofit military association under DOD Directive 1344.7 and paragraph 2-5b, AR 210-7, for the purpose of conducting educational programs on Army installations. The Judge Advocate General found no legal objection to the recognition of the associations as long as they complied with AR 210-7. To insure compliance, The Adjutant General must determine that any materials to be distributed are entirely educational in nature and do not contain contract or application forms.

10. (Military Installations, Post Services) A Military Member May Not Revoke the PX Privileges Of A Dependent. DAJA-AL 1978/ 2772, 8 June 1978. The Adjutant General requested The Judge Advocate General to review a suggestion that military personnel be granted authority to withhold PX privileges from their own dependents who abuse such privileges. The Judge Advocate General advised that under current DOD and Army regulatory authority, dependents who meet the eligibility criteria prescribed in paragraph 1.201.8, DOD Directive 1330.9 and paragraph A-8, Army Regulation 60-20, are entitled to exchange privileges in their own right. The sponsor may not, therefore, be granted discretionary authority to withdraw exchange privileges from dependents who are alleged to have abused or misused the privilege.

11. (Military Installations, Post Services) Use of DD Form 1172, Application For Uniform Services Identification And Privilege Card, Does Not Create An Agency Relationship Permitting Check Writing Sanctions To Be Imposed Against A Sponsor For Issuance Of Bad Checks By Dependents In Post Exchanges. DAJA-AL 1978/2414, 26 April 1978. Under paragraph 4h, AR 608-16, check cashing privileges for the issuance of dishonored checks may be suspended only against the actual check writer, except in instances where an agency relationship exists. An Army staff agency inquired whether an agency relationship is established between a sponsor and his/ her dependents when a sponsor submits a DD Form 1172 for purposes of obtaining an ID card for his/her dependents. The Judge Advocate General stated that the application did not create an agency relationship but merely identifies those dependents authorized access by the regulation. See paragraph 3-8a(1) and 3-10a, AR 60-20.

12. (Military Installations, Real Property)
Proposed Nationally Televised Boxing On

The Installation. DAJA-AL 1978/2849, 26 May 1978. An Army staff agency asked The Judge Advocate General whether a local military installation could retain any portions of payments received as a part of an agreement entered into between the Secretary of Army and a private corporation to televise boxing at a military installation. The Judge Advocate General concluded that the proposed activity would involve a grant by the Army of a license to the contractor for the use of Army real property. The license does not appear to be of a minor character (para, 52, AR 405-80) and, therefore, is not a type of license which may be granted by the installation commander. The request for such a license must be referred to the Secretary of Army (para. 31, AR 405-80). Moreover, the commercial use of Army real property is prohibited (chap. 2, AR 360-61), but an exception may be granted by Headquarters, Department of the Army.

13. (Military Installations, Regulations) Publication Of A Local Command Regulation In The Federal Register Was Required. DAJA-AL 1978/2898, 30 June 1978. A local command regulation established procedures governing entry upon certain Army training areas. It provided that entry was prohibited without the advance consent of the commander or his authorized representative and that violators would be subject to criminal prosecution under federal statutes 18 U.S.C. § 1382 and 50 U.S.C. § 797. The Judge Advocate General agreed with The Adjutant General's conclusion that this regulation should be published in the Federal Register.

The Federal Register Act, 44 U.S.C. § 1501 et seq., requires publication of documents having general applicability and legal effect. Although the regulation merely restated the statutory penalties, publication was still required because the regulation prescribed "a course of conduct (1 CFR 1.1.)." Although promulgated by a local command, the regulation nevertheless established "substantive rules of general applicability affecting the public" and thus, publication was required by the Freedom of Information Act, 5 U.S.C. § 552.

Publication of the local command regulation was consistent with guidance contained in DOD Directive 5400.9 and AR 310-4.

14 (Separation From the Service, Discharge) Introduction Of Exempt ADAPCP Evidence In Elimination Proceedings For Civil Conviction UP AR 635-206 Results In Issuance Of Honorable Discharge If Based On Those Proceedings. However, Regulations Permit (1) Reinitiation Of Proceedings Prior To A Board Hearing, And (2) Where Exempt Evidence Is Improperly Introduced Before A Board, Empowers A GO GCMCA To Set Aside The Board Proceedings And Direct Rehearing. DAJA-AL 1978/2624, 30 May 1978. In April 1977, EM plead guilty to armed robbery and was sentenced to 25 years imprisonment by a North Carolina court. In October 1977 elimination proceedings were initiated UP AR 635-206 (superseded) for civil conviction. At the hearing in December 1977, the recorder introduced respondent's entire MPRJ in evidence, apparently to prove he had not been awarded any personal decorations. The MPRJ contained information concerning EM's participation in the ADAPCP. Respondent's counsel thereupon cited the ADAPCP exemption policy (Sec. V, Chap. 3, AR 600-85) and argued his client was entitled to an honorable discharge due to introduction of the exempt information. The board found EM unfit for retention due to civil conviction and recommended an honorable discharge.

The convening authority obtained statements from the members that their recommendation for an honorable discharge was based solely on the exemption policy; otherwise, they would have recommended a discharge under other than honorable conditions. The recorder also executed a statement that the introduction of exempt information was inadvertent. The file was forwarded to DA requesting exception to the exemption policy to permit issuance of an other than honorable discharge or authority for rehearings in such cases. MILPERCEN requested an OTJAG opinion. Regulations setting forth the policy expressly require strict adherence, without permitting waiver (para. F, Encl

2, DOD Dir. 1332.14 and subparas. 3-17a and d, AR 600-85). Thus, the requested exception could not be granted under current regulations.

TJAG stated there would be no legal impediment, however, to a regulatory provision permitting a case tainted by exempt evidence to be reheard by a new board of officers. TJAG suggested changes to AR 600-85 and AR 635-200 to accomplish this objective. These changes were implemented in DA MSG 132105Z JUN 78, Subject: Interim Change to AR 600-85, Alcohol and Drug Abuse Prevention and Control Program and DA MSG 141205Z JUN 78. Subject: "Intermin Change to AR 635-200, Personnel Separations." If exempt evidence is improperly included in administrative discharge actions based on nonexempt grounds before the board convenes, the elimination proceedings may be reinitiated excluding all references to the exempt information. And where the information is introduced after the board convenes, a GCMCA who is a GO may set aside the board proceedings and refer the case to a new board for a rehearing. The rule remains the same that, if the respondent or his counsel initially introduces exempt evidence, the type of discharge is not automatically restricted to an honorable discharge based on those proceed-

15. (Separation From The Service, General) A Purported Discharge Issued Under The Expeditious Discharge Program Is Void Ab Initio If Not Issued By Competent Authority. DAJA-AL 1978/2865, 22 June 1978. A serviceman in Korea awaiting discharge under the Expeditious Discharge Program (EDP) was charged with a criminal offense and convicted by a special court-martial before he could be transferred to the United States for separation. However, orders directing his separation were received at the U.S. Army Transfer Point, Oakland, CA, which mistakenly determined that the service member was AWOL since he never arrived in Oakland. Therefore, the Transfer Point purported to discharge him in absentia under the EDP and mailed a DD Form 214 to his home of record. Subsequent to the purported discharge, new orders were published in Korea, following the court-martial there assigning the now convicted soldier from Korea to the U.S. Army Retraining Brigade, Ft. Riley, KS, to serve his sentence to confinement. The soldier absented himself from the U.S. Army Retraining Brigade and was dropped from the rolls as a deserter. Later, when he was apprehended and charged with desertion, he challenged the Army's jurisdiction to try him, claiming that he had already been discharged.

In response to a MILPERCEN request to clear the murky waters regarding the individual's military status, The Judge Advocate General advised that, because the servicemember had never been transferred from his unit in Korea, the purported discharge by the Oakland Transfer Point was not by a competent authority and was, therefore, void ab initio.

16. (Separation From The Service—Grounds) In An Officer Elimination Action Under The Provisions Of Paragraph 5-11f, Army Regulation 635-100 (Apathy, Defective Attitudes, Or Other Character Disorders To Include Inability Or Unwillingness To Expend (Effort), Apathy May Not Be Presumed Solely From The Failure Of the Officer To Lose Weight While In The Weight Control Program. DAJA-AL 1978/3087, 20 July 1978.

An officer was recommended for elimination for failure to achieve the weight standards of Army Regulation 600-9 after being in the weight control program for one year. However, while in the program, he maintained contact with the treating physician, apparently made satisfactory progress at some point during the year, and was not characterized as apathetic by his military doctor. Elimination was recommended when the officer gained weight during one month.

In response to an ODCSPER request for review and comment on the case, The Judge Advocate General expressed the opinion that, apathy may not be presumed solely from the failure to lose weight. To support an elimination action, the record must show not only that the officer failed to make satisfactory progress

in a weight control program, but that his failure to progress satisfactorily was the result of apathy, lack of self-discipline, evasive performance, or other character deficiencies. Whether the evidence submitted in any particular case is sufficient to require an officer to show cause is a determination to be made by the selection board.

Legal Assistance Items

Major F. John Wagner, Jr., Developments, Doctrine and Literature Department, Major Joseph C. Fowler, Jr. and Major Steven F. Lancaster, Administrative and Civil Law Division, TJAGSA

Administration—Preventive Law Program

In an action estimated to mean more than \$1 million a year for consumers, the Ford Motor Company and its credit subsidiary, Ford Motor Credit Company, have agreed to a Federal Trade Commission order providing for the prompt refund of all surpluses obtained by Ford dealers on future resales of repossessed cars and trucks.

The order will affect some 3,500 dealers and as many as 40,000 vehicles a year.

The \$19 million estimate is based on a Seattle Regional Office survey showing that in a recent one year period approximately 15 percent of the vehicles repossessed by Ford Credit and resold by Ford dealers resulted in an average surplus of more than \$200.

The consent order also requires refunds to consumers of all surpluses realized since May 1, 1974 by approximately 200 dealerships in which Ford owns all or part of the voting stock. The Seattle staff, which handled the matter for the Commission, estimated that these refunds will result in approximately \$100,000 for consumers

Ford agreed to establish a detailed accounting system to identify surpluses realized in the sale of all repossessed vehicles and to make sure the surpluses are paid promptly to consumers.

A surplus occurs when a repossessed vehicle is resold for more than needed to cover the amount owed and reasonable expenses of sale. According to the Commission's February 1976 complaint which began the case, surpluses have

generally been kept by the selling dealer. Under the order, they will be refunded to the customers from whom the vehicles were repossessed.

The agreed to order requires Ford to change its accounting manual, which is binding on all Ford dealers, to provide that:

each Ford dealer will obtain the best available price in reselling any repossessed vehicle returned to it;

the dealer must pay any resulting surplus within 45 days of the resale;

the only expenses that may be deducted are the actual out-of-pocket expenses incurred as a direct result of repossessing, holding, preparing for sale or reselling the vehicle;

Ford dealers must employ the same accounting system in nonsurplus resales where the dealer undertakes to collect additional amounts allowed under state law ("deficiencies"); and

a prescribed summary must be provided to any consumer owed a surplus or from whom the dealer attempts to collect a deficiency.

Other provisions of the consent order require:

a notice to each customer whose vehicle is hereafter repossessed by Ford credit, stating the nature and duration of the customer's rights to get the vehicle back and the amount required to do so, and setting forth the customer's right to a refund of any surplus remaining after resale; statements of customers' surplus and/or redemption rights to be included in certain other Ford Credit documents provided to customers and in Ford Credit's contractual arrangements with dealers;

prohibitions against obtaining waivers of customer's surplus or redemption rights; and

bulletins to all Ford dealers setting forth their duty to pay surpluses, urging them to pay surpluses on past repossessions and identifying all repossessed vehicles returned to them by Ford Credit since May 1, 1974.

The complaint was limited to repossessed vehicles resold by Ford-owned dealers and vehicles repossessed and returned to Ford dealers by Ford Credit. The consent order expands the coverage of the complaint to include vehicles repossessed and returned to independent Ford dealers for resale by creditors other than Ford Credit, e.g., banks and finance companies.

The complaint also named Francis Ford, Inc., a Ford dealer in Portland, Oregon, as a participant in these practices with respect to the repossessed vehicles it has sold. Francis Ford has disputed the charges and is not a party to the settlement proposal. The trial relating to this firm was concluded on July 28, 1978 in Seattle and the administrative law judge will file his initial decision later.

The complaint and consent order will remain on the public record from October 16, 1978 through December 14, 1978. Comments from the public received during this period will become part of the public record. They should be addressed to Secretary, Federal Trade Commission, Washington, D.C. 20580. The FTC may withdraw its acceptance of the agreement after further consideration. An analysis of the consent order may be obtained from Public Reference Branch, Room 130, Federal Trade Commission, Washington, D.C. 20580 (Telephone No. (202) 523-3598). Consent Order (D. 9078). [Ref: Ch. 10, DA Pam 27-12.]

Commercial Affairs—Commercial Practices and Controls—State's Statutory and Regulatory Consumer Protections—New York.

On 25 July 1978 the New York Legislature approved a statutory amendment which would preserve consumer's claims and defenses. Generally, the assignee of a retail installment contract or obligation shall be subject to all claims and defenses of the buyer against the seller arising from the sale notwithstanding any agreement to the contrary. The assignee's liability under this amendment shall not exceed the amount owing to the assignee at the time the claim or defense is asserted against the assignee. Section 403(5), as added by laws 1970, chapter 299; as amended by laws 1971, chapter 1213; laws 1973, chapters 237 and 410; laws 1978, chapter 643, approved July 25, 1978, effective October 23, 1978. [Ref: ch. 10, DA Pam 27-12.]

Commercial Affairs—Commercial Practices and Controls—Federal Statutory and Regulatory Consumer Protections—Truth and Lending Act. On 18 October n1978 the Board of Governors of the Federal Reserve System exempted federally-chartered credit unions having their main offices, office of charter, in Massachusetts, from some of the disclosure requirements of the Truth and Lending Act and Regulation Z. This exemption is based on an agreement between the Massachusetts' Commissioner of Banks and National Credit Union Administration. Accordingly, § (d) of Supplement III of Regulation Z is amended to read:

(d) Massachusetts: Except as provided in session 226.12(c), and except for those transactions in which a federally-chartered institution—other than a federally-chartered credit union having its main office, or office of charter, within Massachusetts—is a creditor, the following classes of credit transactions within the Commonwealth of Massachusetts are hereby granted an exemption from the requirement of chapter 2 of the Truth and Lending Act:

The effective date of the Massachusetts exemption is 20 November 1978. For further information contact Robert C. Plows, Section Chief, Regulations Section, Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452-3667. [Ref. Ch. 10, DA Pam 27-12.]

Commercial Affairs—Commercial Practices and Controls—Federal Statutory and Regulatory Consumer Protections—The Fair Debt Collection Practices Act. Barron, an introduction to the Fair Debt Collection Practices Act, 95 Banking Law Journel 500 (June/July 1978). [Ref. Ch. 10, DA Pam 27-12.]

Operation of the "Quota System" for JAG School Resident Courses

One important and often overlooked aspect of the JAG School's Continuing Legal Education Program is the administration of the course quota system. Individuals who wish to attend courses, and managers who wish to send students, need to understand how the system works.

The first thing to realize is that students cannot just show up at the JAG School for a course. Attorneys may consider they are simply returning to the "Home of the Army Lawyer" for additional legal training and figure this is all a JAG matter. Control of school attendance is accomplished through command training and operations channels. Students and managers must use those channels not only to obtain local approval and travel funds, but also to secure a reservation for a seat in the course. This reservation is called a quota.

Each year after the academic schedule has been set, the JAG School determines how many seats will be available for individual courses. The School then allocates these seats to the principal users: TRADOC, FORSCOM, DAR-COM and some dozen other organizations. The School assigns spaces on request to overseas Army commands, small Army organizations, and federal agencies. In most cases, all spaces have been distributed about four months before a course begins. Thirty days before a course begins, training offices of the major commands notify the School of the names and addresses of students who will attend. The training offices also request additional space if needed and return unused quotas. In turn, the School reallocates quotas to fill the needs of these commands. The School screens the final list of attendees for compliance with course prerequisites and sends out administrative welcome letters. Except for OTJAG, overseas JAG offices and a few other agencies, all of this is done through command training channels, not through JAG technical channels.

The School also publishes the list of courses in The Army Lawyer and the School's Annual Bulletin. With this information, and even in advance, legal offices budget for courses, identify training requirements and schedule individuals to attend courses. Requests for allocation of quotas should be made to local training offices, which in turn obtain quotas from the major commands. If this generates sufficient demand, the MACOM training offices request more spaces from the JAG School. If spaces are available, the School gives out additional quotas. When a course is full and a waiting list develops, the School reexamines the course to determine if the class can be enlarged or if another session should be offered early in the following academic year.

Training office procedures differ from command to command. The major commands set their own administrative requirements and deadlines. TRADOC, for example, requires notification of student names to them 45 days in advance of a course. They need that time to verify eligibility, to reallocate unused quotas, and to report the names to the School. If names are not submitted in time by the subordinate commands, quota allocations are subject to cancellation. Each subordinate command also has its own requirements. JAG training managers should check into their local training channel procedures and follow those rules to insure that

a seat is reserved in the courses their attorneys wish to attend.

This year, 44 different groups of students, over 2,500 individuals, will attend JAG School courses. The School must rely on the major commands to handle the administration of getting those students to Charlottesville. To insure that the existing command channel quota system works, the School will not circumvent the rules set up by those commands. If a command decides to cancel a quota because a name

was not submitted in time, the School will not supply a quota directly to the JAG office. To do so would undermine the command authority to control administrative matters within its organization.

This is not a complicated system. It is set up to work with minimal drain on JAG resources. The important thing is to develop a good working relationship with the local training office, follow their procedures, budget and plan in advance.

CLE NEWS

1. Civilian Sponsored CLE Courses.

DECEMBER

1-2: ALSI, Federal Practice Update and Analysis, Radisson St. Paul Hotel, St. Paul, MN. Contact: Advanced Legal Studies Institute, McGraw-Hill, 1221 Avenue of the Americas, New York, NY 10020. Phone: (212) 997-2118. Cost: \$195.

1-2: PLI, the Abused and Neglected Child, Sir Francis Drake Hotel, San Francisco, CA. Contact: Practising Law Institute, 810 Seventh Ave., New York, NY 10019. Phone: (212) 765-5700. Cost: \$100.

3-6: National College of District Attorneys, Prosecuting Crimes Against Persons, San Diego, CA. Contact: NCDA, College of Law, University of Houston, Houston, TX 77004. Phone: (713) 749-1571.

4-8: George Washington Univ., Equal Employment Course, Sheraton National, Arlington, VA. Contact: George Washington University, Seminar Division Office, Suite 500, 1725 K St. NW, WASH DC 20006. Phone: (202) 337-7000. Cost: \$600.

4-6: George Washington Univ., Patents and Technical Data, G.W.U. Library, WASH DC. Contact: Government Contracts Program, G.W.U., 2000 "H" St. NW, WASH DC 20052. Phone: (202) 676-6815. Cost: \$425.

4-5: PLI, Employment Discrimination Litigation, Stanford Court Hotel, San Francisco, CA. Contact: Practising Law Institute, 810 Seventh Ave., New York, NY 10019. Phone: (212) 765-5700. Cost: \$200.

4-6: University of Santa Clara Law School, Government Contract Costs, The Cascades Hotel, Williamsburg, VA. Contact: Seminar Division Office, Suite 500, 1725 K St., NW, WASH DC 20006. Phone: (202) 337-7000. Cost: \$475.

7-8: Professional Seminar Associates, Inc., Personnel Law, The Watergate Hotel, WASH DC. Contact: Profes-

sional Seminar Associates, P.O. Box 314, Westfield, NJ 07090. Phone: (201) 232-2455. Cost: \$350.

8-9: Practising Law Institute, Medical Malpractice Litigation, The Biltmore Hotel, New York, NY. Contact: Practising Law Institute, 810 Seventh Ave., New York, NY 10019. Phone: (212) 765-5700. Cost: \$175.

10-15: National Judicial College, Administrative Law Procedure—General, Univ. of Nevada, Reno, NV. Contact: National Judicial College, University of Nevada, Reno, NV 89557. Phone: (703) 784-6747.

14-16: ALI-ABA, The New Federal Bankruptcy Code, New York, NY. Contact: Donald M. Maclay, Director, Office of Courses of Study, ALI-ABA Committee on Continuing Professional Education, 4025 Chestnut St., Philadelphia, PA 19104. Phone: (215) 387-3000.

14--15: PLI, Advanced Criminal Trial Tactics, Americana Hotel, New York, NY. Contact: Practising Law Institute, 810 Seventh Ave., New York, NY 10019. Phone: (212) 765-5700. Cost: \$200.

14-15: PLI, Post Mortem Estate Planning, Sheraton Harbor Island Hotel, San Diego, CA. Contact: Practising Law Institute, 810 Seventh Ave., New York, 10019. Phone: (212) 756-5700.

15-16: ALSI, Federal Practice Update and Analysis, Detroit Plaza Hotel, Detroit MI. Contact: Advanced Legal Studies Institute, McGraw-Hill, 1221 Avenue of the Americas, New York, NY 10020. Phone: (212) 997-2118. Cost: \$195.

15-17: NCCDL, Advanced Cross-examination Techniques: Agents, Informers, Experts and Immunized Witnesses, Dunes Hotel & Country Club, Las Vegas, NW. Contact: The National College of Criminal Defense Lawyers and Public Defenders, College of Law, University of Houston, 4800 Calhoun, Houston, TX 77004. Phone: (713) 749-2283. Cost: \$150.

18-20: Univ. of Santa Clara, Cost Estimating for Gov-

ernment Contracts, San Diego Hilton, San Diego, CA. Contact: Seminar Division Office, Suite 500, 1725 K St. NW, WASH DC 20006. Phone: (202) 337-7000. Cost: \$500.

20-21: Professional Seminar Associates, Inc., Personnel Law, Hyatt Regency Hotel, Houston, TX. Contact: Professional Seminar Associates, P.O. Box 314, Westfield, NJ 07090. Phone: (201) 232-2455. Cost: \$350.

JANUARY

3-4: ALI-ABA, The Compensation Issue: The Liability of Governments and their Employees in Damages for Planning and Land Use Controls, Coronado, CA. Contact: Donald M. Maclay, Director, Office of Courses of Study, ALI-ABA Committee on Continuing Professional Education, 4025 Chestnut St., Philadelphia, PA 19104. Phone (215) 387-3000.

7-12: National College of District Attorneys, Prosecutor's Office Administrator Course, Part II, Houston, TX. Contact: NCDA, College of Law, University of Houston, Houston, TX 770004. Phone: (713) 749-1571.

8-9: PLI Employment Discrimination Litigation, Hyatt Regency Hotel, Wash DC. Contact: Practising Law Institute, 810 Seventh Avenue, New York, NY 10010. Phone (212) 765-5700. Cost: \$200.

12-13: Practising Law Institute, Medical Malpractice Litigation, The Ambassador West Hotel, Chicago, IL. Contact: Practising Law Institute, 810 Seventh Avenue, New York, NY 10019. Phone: (212) 765-5700. Cost: \$175.

15-16: PLI, Real Estate Development and Construction Financing, Fairmont Hotel, New Orleans, LA. Contact: Practising Law Institute, 810 Seventh Avenue, New York, NY 10010. Phone (212) 765-5700.

18-19: ALI-ABA, Estate Planning for Interests in a Closely-Held Business, New Orleans, LA Contact: ALI-ABA Committee on Continuing Professional Education, 4025 Chestnut St., Philadelphia, PA 19104. Phone: (215) 387-3000.

18-19: PLI, Income Taxation of Estates and Trusts, Bonaventure Hotel, Los Angeles, CA. Contact: Practising Law Institute, 810 Seventh Ave., New York, NY 10019. Phone: (212) 765-5700. Cost: \$200.

18-20: ALI-ABA, Labor Law Relations and Employment for the Corporate Counsel and General Practitioner, Atlanta, GA. Contact: Donald M. Maclay, Director, Office of Courses of Study, ALI-ABA Committee on Continuing Professional Education, 4025 Chestnut St., Philadelphia, PA 19104. Phone: (215) 387-3000.

19-20: PLI, The Abused and Neglected Child, Biltmore Hotel, New York. Contact: Practising Law Institute, 810 Seventh Avenue, New York, NY 10019. Phone: (212) 765-5700. Cost: \$100.

22-26: American Academy of Judicial Education, Jury Trial Workshop (for judges), University of Miami Law School, Coral Gables, FL. Contact: American Academy of Judicial Education, Suite 539, 1426 H Street, NW, Washington, DC 20005. Phone: (202) 783-5151. Cost: \$300.

25-26: ALSI, Federal Practice Update and Analysis, Beau Rivage Hotel, Miami, FL. Contact: Advanced Legal Studies Institute, McGraw-Hill, 1221 Avenue of the Americas, New York, NY 10020. Phone: (202) 997-2118. Cost: \$195.

2. TJAGSA CLE Courses.

December 4-5: 2d Contract Attorneys Workshop (5F-F15).

December 7-9: JAG Reserve Conference and Workshop.

December 11-14: 6th Military Administrative Law Developments (5F-F25).

January 8-12: 9th Contract Attorneys' Advanced (5F-F11).

January 8-12: 10th Law of War Workshop (5F-F42).

January 15-17: 5th Allowability of Contract Costs (5F-F13).

January 15-19: 6th Defense Trial Advocacy (5F-F34).

January 22-26: 44th Senior Officer Legal Orientation (5F-F1).

January 29-March 30: 89th Judge Advocate Officer Basic (5-27-C20).

January 29-February 2: 18th Federal Labor Relations (5F-F22).

February 5-8: 8th Environmental Law (5F-F27).

February 12-16: 5th Criminal Trial Advocacy (5F-F32).

February 21-March 2: Military Lawyer's Assistant (512-71D20/50).

March 5-16: 79th Contract Attorneys' (5F-F10).

March 5-8: 45th Senior Officer Legal Orientation (War College) (5F-F1).

March 19-23: 11th Law of War Workshop (5F-F42).

March 26-28: 3d Government Information Practices (5F-F28).

April 2-6: 46th Senior Officer Legal Orientation (5F-F1).

April 9-12: 9th Fiscal Law (5F-F12).

April 9-12: 2d Litigation (5F-F29).

April 17-19: 3d Claims (5F-F-26).

April 23-27: 9th Staff Judge Advocate Orientation (5F-F52).

April 23-May 4: 80th Contract Attorneys' (5F-F10).

May 7-10: 6th Legal Assistance (5F-F23).

May 14-16: 3d Negotiations (5F-F14).

May 21-June 8: 18th Military Judge (5F-F33).

May 30-June 1: Legal Aspects of Terrorism.

June 11-15: 47th Senior Officer Legal Orientation (5F-F1).

June 18-29: JAGSO (CM Trial).

June 21-23: Military Law Institute Seminar.

July 9-13 (Contract Law) and July 16-20 (Int. Law): JAOGC/CGSC (Phase VI Contract Law) Int. Law.

July 9-20: 2d Military Administrative Law (5F-F20).

July 16-August 3: 19th Military Judge (5F-F33).

July 23-August 3: 81st Contract Attorneys' Course (5F-F10).

August 6-October 5: 90th Judge Advocate Officer Basic (5-27-C20).

August 13-17: 48th Senior Officer Legal Orientation (5F-F1).

August 20-May 24, 1980: 28th Judge Advocate Officer Graduate (5-27-C22).

August 27-31: 9th Law Office Management (7A-713A).

September 17-21: 12th Law of War Workshop (5F-F42).

September 28-28: 49th Senior Officer Legal Orientation (5F-F1).

3. TJAGSA Course Prerequisites and Substantive Content.

GENERAL INFORMATION

The Judge Advocate General's School is located on the north grounds of the University of Virginia at Charlottesville. The mission of the School is to provide resident and nonresident instruction in military law. The School's faculty is composed entirely of military attorneys.

THE ACADEMIC DEPARTMENT

The Academic Department develops and conducts resident and nonresident instruction. The organization of the Department includes Criminal Law, Administrative and Civil Law, Internal Law and Contract Law Divisions. Within the Department, the Nonresident Instruction Branch administers the School's correspondence course program and other nonresident instruction.

COURSES OFFERED

The Judge Advocate General's School offers a total of 31 different resident courses. The official source of information concerning courses of instruction at all Army service schools, including the Judge Advocate General's School, is the U.S. Army Formal Schools Catalog (DA Pam 351-4). Attendance by foreign military personnel is governed by applicable Army regulations. Quotas for most courses offered at The Judge Advocate General's School may be obtained through usual unit training channels.* Exceptions to this policy are the Judge Advocate Officer Basic Course, Judge Advocate Officer Graduate Course, and Staff Judge Advocate Orientation Course, quotas for which are controlled by the Personnel, Plans and Training

^{*}see Operation of the Quota System for JAG School Resident Courses, elsewhere in this issue.

Office in the Office of The Judge Advocate General; the Military Judge Course, quotas for which are controlled by the Army Judiciary in Washington, D.C.: and the Senior Officer Legal Orientation Course, quotas for which are controlled by MILPERCEN. Inquiries concerning quotas and waivers of prerequisites should be directed to Commandant, The Judge Advocate, General's School, U.S. Army, Charlottesville, Virginia 22901, ATTENTION: Academic Department.

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COURSE	TITLE
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5-27-C20	Judge Advocate Officer Basic
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5F-F11	Contract Attorneys' Advanced Course
5F-F12	Fiscal Law
5F-F13	Allowability of Contract Costs
5F-F14	Negotiations
5F-F15	Contract Attorneys' Workshop
5F-F20	Military Administrative Law
5F-F21	Civil Law
5F-F22	Federal Labor Relations
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5F-F26	Claims
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5F-F29	Litigation
5F-F30	Military Justice I
5F-F31	Military Justice II
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5F-F40	International Law I
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5F-F42	Law of War Workshop
5F-F43	Legal Aspects of Terrorism
5F-F52	Staff Judge Advocate Orientation

7A-713A Law Office Management 512-71D Military Lawyer's Assistant 20/50

JUDGE ADVOCATE OFFICER BASIC COURSE (5-27-C20)

Length: 9 weeks.

Purpose: To provide officers newly appointed in the Judge Advocate General's Corps with the Basic orientation and training necessary to perform the duties of a judge advocate.

Prerequisites: Commissioned officer who is a lawyer and who has been appointed or anticipates appointment in the Judge Advocate General's Corps or his service's equivalent. Security clearance required: None.

Substantive Content: The course stresses military criminal law and procedure and other areas of military law which are most likely to concern a judge advocate officer in his first duty assignment.

Criminal Law: Introduction to military criminal law and the practical aspects of criminal procedure and practice.

Administrative and Civil Law: Introduction to personnel law (military and civilian), legal basis of command, claims, legal assistance and Army organization and management.

Contract Law: Introduction to the law of U.S. Government contracts.

International Law: Introduction to Law of War and Status of Forces Agreements.

JUDGE ADVOCATE OFFICER GRADUATE COURSE (5-27-C22)

Length: 40 weeks.

Purpose: To provide branch training in and a working knowledge of the duties and responsibilities of field grade Judge Advocate General's Corps officers, with emphasis on the positions of deputy staff judge advocates and staff judge advocates.

Prerequisites: Commissioned officer: Career officer of the Armed Forces whose branch is

JAGC or the service's equivalent, in fourth to eighth year of active commissioned service. Army officers are selected for attendance by The Judge Advocate General.

Service Obligation: Two years.

Substantive Content: The Judge Advocate Officer Graduate Course prepares career military lawyers for future service in staff judge advocate positions. To accomplish this, the course is oriented toward graduate-level legal education comparable to the graduate programs of civilian law schools. The American Bar Association has approved the course as meeting its standards of graduate legal education. The course is conducted over a two-semester academic year totalling approximately 42 credit hours. It consists of the following curriculum elements:

- 1. Core courses consisting of approximately 28 credit hours of criminal law, administrative and civil law, international law, and contract law subjects, military subjects and communications.
- 2. Electives presented both by The Judge Advocate General's School and the University of Virginia School of Law totaling approximately 14 credit hours.

SENIOR OFFICERS' LEGAL ORIENTATION COURSE (5F-F1)

Length: 4-1/2 days.

Purpose: To acquaint senior commanders with installation and unit legal problems encountered in both the criminal and civil law fields.

Prerequisites: Active duty and reserve component commissioned officers in the grade of colonel or lieutenant colonel about to be assigned as installation commander or deputy; service school commandant; principal installation commander or deputy; service school commandant; principal staff officer (such as chief of staff, provost marshal, inspector general, director of personnel) at division, brigade or installation levels; or as a brigade commander. As space permits, those to be assigned as battalion commanders may attend. Security clearance required: None.

Substantive Content: Administrative and Civil Law: Judicial review of military activities, military aid to civil authorities, installation management, labor-management relations, civilian personnel law, military personnel law, nonappropriated funds, civil rights, legal assistance. claims and government information practices. Criminal Law: Survey of principles relating to search and seizure, confessions, and nonjudicial punishment. Emphasis is placed on the options and responsibilities of convening authorities before and after trial in military justice matters, including the theories and practicabilities of sentencing. International Law: Survey of Status of Forces Agreements and Law of War. Procurement Law: Survey of the Anti-Deficiency Act.

CONTRACT ATTORNEYS' COURSE (5F-F10)

Length: 2 weeks.

Purpose: To provide basic instruction in the legal aspects of government procurement at the installation level. Completion of this course also fulfills one-half of the requirements of Phase VI of the nonresident/resident Judge Advocate Officer Graduate Course and covers one-half of the material presented in the USAR School Judge Advocate Officer Graduate Course ADT Phase VI.

Prerequisites: Active duty or reserve component military attorneys or appropriate civilian attorneys employed by the U.S. Government, with six months or less procurement experience. Security clearance required: None.

Substantive Content: Basic legal concepts regarding the authority of the Government and its personnel to enter into contracts; contract formation (formal advertising and negotiation), including appropriations, basic contract types, service contracts, and socioeconomic policies, contract performance, including modifications, disputes, including remedies and appeals.

CONTRACT ATTORNEYS' ADVANCED COURSE (5F-F11)

Length: 1 week.

Purpose: To provide continuing legal education and advanced expertise in the statutes and regulations governing government procurement. To provide information on changes at the policy level.

Prerequisities: Active duty or reserve component military attorneys or appropriate civilian attorneys employed by the U.S. Government. Applicants must have successfully completed the Contract Attorneys' Course (5F-F10), or equivalent training, or have at least one year's experience as a procurement attorney. Security clearance required: None.

Substantive Content: Advanced legal concepts arising in connection with the practical aspects of contracting, funding, competitive negotiation, socioeconomic policies, government assistance, state and local taxation, modifications, weapons system acquisition, truth in negotiations, terminations, labor relations problems, contract claims, and litigation. Course will normally be theme oriented to focus on a major area of procurement law. Intensive instruction will include current changes in the laws, regulations and decisions of courts and boards. The 9th Contract Attorneys' Course theme deals with contract formations with emphasis on socioeconomic policies and other legislation.

FISCAL LAW COURSE (5F-F12)

Length: 3-1/2 days.

Purpose: To provide a basic knowledge of the laws and regulations governing the obligation and expenditure of appropriated funds and an insight into current fiscal issues within the Department of the Army. The course covers basic statutory constraints and administrative procedures involved in the system of appropriation control and obligation of funds within the Department of Defense. This course emphasizes the methods contracting officers and legal and financial personnel working together can utilize to avoid over-obligations.

Prerequisites: Active duty commissioned officer of an armed force, or appropriate civilian employee of the U.S. Government actively engaged in procurement law, contracting or administering funds available for obligation on procurement contracts. Must be an attorney, contracting officer, comptroller, Finance & Accounting Officer, Budget Analyst or equivalent. Attendees should have completed TJAGSA Contract Attorneys' Course, a financial manager's course, a comptrollership course or equivalent.

Substantive Content: Practical legal and administrative problems in connection with the funding of government contracts. Basic aspects of the appropriations process, administrative control of appropriated funds, the Anti-Deficiency Act, Industrial and Stock Funds, and the Minor Construction Act will be covered.

ALLOWABILITY OF CONTRACT COSTS COURSE (5F-F13)

Length: 2-1/2 days.

Purpose: The Allowability of Contract Costs Course is a basic course designed to develop an understanding of the nature and means by which the government compensates contractors for their costs. The course focuses on three main areas: (1) basic accounting for contract costs; (2) the Cost Principles of ASPR § 15; and (3) the Cost Accounting Standards Board and the Costs Accounting Standards. The course is a mixture of lectures and panel discussions aimed at covering substantive and practical issues of contract costs. This course is not recommended for attorneys who are experienced in application of cost principles.

Prerequisites: Active duty or reserve component military attorney or appropriate civilian attorney employed by the U.S. Government, with at least one year of procurement experience. Applicants must have successfully completed the Contract Attorneys' Course (5F-F10) or equivalent.

Substantive Content: This introductory course will focus on three main areas: functional cost accounting terms and application, cost principles, and cost accounting Standards.

NEGOTIATIONS COURSE (5F-F14)

Length: 2-1/2 days.

Purpose: The Negotiations Course is designed to develop advanced understanding of the negotiated competitive procurement method. The course focuses on the attorney's role in negotiated competitive procurement, including: (1) when and how to use this method; (2) development of source selection criteria; (3) source selection evaluation process; (4) competitive range; (5) oral and written discussions; and (6) techniques.

Prerequisites: Active duty or reserve component military attorney or appropriate civilian attorney employed by the U.S. Government, with at least one, but not more than five years of procurement experience. Applicants must have successfully completed the Contract Attorneys' Course (5F-F10) or equivalent. Security clearance required: None.

Substantive Content: The course will focus on solicitation and award by negotiation including selection of the procurement method, use of the negotiation process in the development of source selection, discussion and techniques.

CONTRACT ATTORNEYS' WORKSHOP (5F-F15)

Length: 2 days.

Purpose: The workshop provides an opportunity to examine, in the light of recent developments, and discuss in depth current procurement problems encountered in installation SJA offices. Attorneys will be asked to submit problems in advance of attendance. These will be collected, researched and arranged for seminar discussion under the direction of the Contract Law faculty.

Prerequisites: Active duty or reserve component military attorneys or appropriate civilian attorneys employed by the U.S. Government

with not less than 12 months procurement experience who are currently engaged in the practile ts procurement law at installation level. Security clearance required: None.

Substantive Content: Discussion of current developments in procurement law and their application to the problems currently experienced in installation level procurement.

MILITARY ADMINISTRATIVE LAW COURSE (5F-F20)

Length: 2 weeks.

Purpose: To provide a working knowledge of selected subjects in the area of administrative law. (Students may attend either the week of personnel law instruction or the week of legal basis of command instruction, or both.) This course is specifically designed to fulfill one-half of the reserve requirements of Phase IV of the nonresident/resident Judge Advocate Officer Graduate Course. It also covers one-half of the material presented in the USAR School Judge Advocate Officer Graduate Course ADT Phase IV.

Prerequisities: Active duty or reserve component military attorney, 02-04, or appropriate civilian attorney employed by the U.S. Government. Although appropriate for active duty personnel, enrollment is not recommended unless the individual is working toward completion of the Graduate Course by correspondence. Security clearance required: None.

Substantive Content: Personnel Law: Basic concepts of personnel law and judicial review of military activities: statutes, regulations and court decisions relating to military personnel law, boards of officers, civilian personnel law, labor-management relations and federal review of military activities. Legal Basis of Command: Statutes, regulations and court decisions relating to the control and management of military installations and nonappropriated funds, environmental law, military assistance to civil authorities, and criminal and civil liabilities of military personnel.

CIVIL LAW COURSE (5F-F21)

Length: 2 weeks.

Purpose: To provide a working knowledge of legal assistance and claims. (Students may attend either the week of claims instruction or the week of legal assistance instruction, or both.) This course is specifically designed to fulfill one-half of the requirements of Phase IV of the nonresident/resident Judge Advocate Officer Graduate Course. It also covers one-half of the material presented in the USAR School Judge Advocate Officer Graduate Course ADT Phase IV.

Prerequisites: Active duty or reserve component military attorney, 02-04, or appropriate civilian attorney employed by the U.S. Government. Although appropriate for active duty personnel, enrollment is not recommended unless the individual is working toward completion of the Graduate Course by correspondence. Security clearance required: None.

Substantive Content: Legal Assistance: Statutes, regulations, and court decisions which affect members of a military community, including personal finances, consumer protection, family law, taxation, survivor benefits, civil rights, and state small claims procedures. Claims: Statutes, regulations and court decisions relating to the Military Personnel and Civilian Employees Claims Act, Military Claims Act, Army National Guard Claims Act, Federal Tort Claims Act and claims in favor of the government.

FEDERAL LABOR RELATIONS COURSE (5F-F22)

Length: 4-1/2 days.

Purpose: To provide a basic knowledge of personnel law pertaining to civilian employees, and labor-management relations.

Prerequisites: Active duty or reserve component military attorney or appropriate civilian attorney employed by the U.S. Government. Reserve officers must have completed the Judge Advocate Officer Graduate Course. Al-

though appropriate for reservists, enrollment is not recommended unless the individual is working in the area covered by the course. Persons who who have completed this course within the past two-year period immediately preceeding the date of this course are not eligible to attend. Security clearance required: None.

Substantive Content: Law of Federal Employment: Hiring, promotion and discharge of employees under the FPM and CPR; role of the Civil Service Commission; procedures for grievances, appeals and adverse actions; personal rights of employees; and equal employment opportunity complaints. Federal Labor-Management Relations: Rights and duties of management and labor under Executive Order 11491, as amended, and DOD Directive 1426.1; representation activities; negotiation of labor contracts; unfair labor practice complaints; administration of labor contracts and procedures for arbitration of grievances. Government Contractors: An overview of the responsibility of military officials when government contractors experience labor disputes.

LEGAL ASSISTANCE COURSE (5F-F23)

Length: 3-1/2 days.

Purpose: A survey of current problems in Army legal assistance providing knowledge of important legal trends and recent developments involved in areas of legal assistance rendered to service members.

Prerequisites: Active duty or reserve component military attorney or appropriate civilian attorney employed by the U.S. Government. Reserve officers must have completed the Judge Advocate Officer Graduate Course. Although appropriate for reservists, enrollment is not recommended unless the individual is working the area covered by the course. The student is expected to have experience in the subject area or have attended the Basic or Graduate Course. Security clearance required: None.

Substantive Content: New developments in

the areas of legal assistance rendered military personnel including consumer protection, family law, state and federal taxation, civil rights, survivor benefits, bankruptcy, and small claims. The instruction is presented with the assumption that students already have a fundamental knowledge of legal assistance.

MILITARY ADMINISTRATIVE LAW DEVELOPMENTS COURSE (5F-F25)

Length: 4 days.

Purpose: To provide knowledge of important legal trends and recent developments in military administrative law, judicial review of military actions, and decisions relating to the operation of military installations.

Prerequisites: Active duty or reserve component military attorney or appropriate civilian attorney employed by the U.S. Government. Reserve officers must have completed the Judge Advocate Officer Graduate Course. Although appropriate for reservists, enrollment is not recommended unless the individual is working in the area covered by the course. The student is expected to have experience in the subject area. Security clearance required: None.

Substantive Content: New developments in the areas of military administrative law including military personnel, civilian personnel, military assistance to civil authority, legal basis of command (military installation law) and nonappropriated funds, with particular emphasis on developing case law in the areas of administrative due process, vagueness, and constitutionality of regulations, including first and fourteenth amendment considerations. Developments in the area of judicial review of military activities, including procedures for control and management of litigation involving the Army as required by AR 27-40. The instruction is presented with the assumption that students already have a fundamental knowledge of the areas covered.

CLAIMS COURSE (5F-F26)

Length: 3 days

Purpose: To provide advanced continuing legal education in the Army Claims System, including recent judicial decisions and statutory and regulatory changes affecting claims.

Prerequisites: U.S. Army active duty or reserve component attorney or appropriate civilian attorney employed by the Department of the Army. Reserve officers must have completed the Judge Advocate Officer Graduate Course. Although appropriate for reservists, enrollment is not recommended unless the individual is working in the area covered by the course. The student is expected to have experience in the subject area. Persons who have completed this course within the past two-year period immediately preceding the date of this course are not eligible to attend. Security clearance required: None.

Substantive Content: Claims against the government. Analysis of claims relating to Military Personnel and Civilian Employees Claims Act, Federal Tort Claims Act, National Guard Claims Act, Foreign Claims Act, and Nonscope Claims Act. Recent developments in foregoing areas will be emphasized. Claims in favor of the government. Analysis of Federal Claims Collection Act and Federal Medical Care Recovery Act with emphasis on recent developments.

ENVIRONMENTAL LAW COURSE (5F-F27)

Length: 3-1/2 days.

Purpose: To provide instruction in the basic principles of environmental law as they affect federal installations and activities.

Prerequisites: Active duty or reserve component military lawyer or appropriate civilian attorney employed by the U.S. Government. Reserve officers must have completed the Judge Advocate Officer Basic Course. Security clearance required: None.

Substantive Content: Basic principles of environmental law as it applies to military installations, including the National Environmental Policy Act and its requirement for preparation of environmental impact statements, the Clean Air Act, and the Federal Water Pollution Control Act. The course also includes a brief discussion of other environmental laws and the roles of the Environmental Protection Agency and the Army Corps of Engineers in environmental regulation.

GOVERNMENT INFORMATION PRACTICES COURSE (5F-F28)

Length: 2-1/2 days.

Purpose: To provide basic knowledge of the requirements of the Freedom of Information Act and the Privacy Act. This course is designed primarily for practicing military lawyers in the field.

Prerequisites: Active duty or reserve component military lawyer or appropriate civilian attorney employed by the U.S. Government. Reserve officers must have completed the Judge Advocate Officer Basic Course. Persons who have completed this course within the two-year period immediately preceding the date of this course are not eligible to attend. Security clearance required: None.

Substantive Content: The disclosure requirements of the Freedom of Information Act; the exemptions from disclosure and their interpretation by the federal courts; the restrictions on the collection, maintenance, and dissemination of personal information imposed by the Privacy Act; the relationship between the two Acts and their implementation by the Army.

LITIGATION COURSE (5F-F29)

Length: 3-1/2 days.

Purpose: To provide basic knowledge and skill in handling litigation against the United States and officials of the Department of Defense in both their official and private capacities. Prerequisites: Activity duty military lawyer or civilian attorney employed by the Department of Defense. Enrollment is not recommended unless the individual is responsible for monitoring, assisting or handling civil litigation at his or her installation. Anyone who has completed the Army Judge Advocate Officer Graduate Course (resident) within two years of the date of this course is ineligible to attend. Persons who have completed this course within the past two-year period immediately preceding the date of this course are not eligible to attend. Security clearance required: None.

Substantive Content: The following areas will be covered: Reviewability and justiciability, federal jurisdiction and remedies, scope of review of military activities, exhaustion of military remedies, Federal Rules of Civil Procedure, civil rights litigation, FTCA litigation, and official immunity. There will be a practical exercise in the preparation of litigation reports and pleadings.

MILITARY JUSTICE I COURSE (5F-F30)

Length: 2 weeks.

Purpose: Tos provide a working knowledge of the duties and responsibilities of field grade Judge Advocate General's Corps officers in the area of military criminal law. This course is specifically designed to fulfill approximately one-half of the requirements of Phase II of the nonresident/resident Judge Advocate Officer Graduate Course. It also covers approximately one-half of the materials presented in the USAR School Judge Advocate Officer Graduate Course ADT Phase II.

Prerequisites: Active duty or reserve component military attorney, 02-04. Although appropriate for active duty personnel, enrollment is not recommended unless the individual is working toward completion of the Graduate Course by correspondence. Security clearance required: None.

Substantive Content: Evidentiary aspects of military criminal law practice, including: scientific evidence, confrontation, compulsory process, right to counsel, federal and common law rules of evidence, search and seizure, self incrimination, identification, substantive law of offenses and defenses, and topical aspects of current military law.

MILITARY JUSTICE II COURSE (5F-F31)

Length: 2 weeks.

Purpose: To provide a working knowledge of the duties and responsibilities of field grade Judge Advocate General's Corps officers in the area of military criminal law. This course is specifically designed to fulfill one-half of the requirements of Phase II of the nonresident/ resident Judge Advocate Officer Graduate Course. It also covers one-half of the material presented in the USAR School Judge Advocate Officer Graduate Course ADT Phase II.

Prerequisites: Active duty or reserve component military attorney, 02-04. Although appropriate for active duty personnel, enrollment is not recommended unless the individual is working toward completion of the Graduate Course by correspondence. Security clearance required: none.

Substantive Content: Procedural aspects of military criminal law, including: administration of military criminal law, jurisdiction, pleadings, motions, pleas, preliminary investigations and reports, court-martial personnel, trial procedures, post trial review and procedures, extraordinary writs, appellate review, professional responsibility, and topical aspects of current military law.

CRIMINAL TRIAL ADVOCACY COURSE (5F-F32)

Length: 4-1/2 days.

Purpose: To improve and polish the experienced trial attorney's advocacy skills.

Prerequisites: Active duty military attorney certified as counsel under Article 27b(2), UCMJ, with at least six months' experience as a trial attorney.

Substantive Content: Intensive instruction and exercises encompass problems confronting trial and defense counsel from pretrial investigation through appellate review. Issues in evidence, professional responsibility, procedure, trial advocacy, and topical aspects of current military law are considered.

MILITARY JUDGE COURSE (5F-F33)

Length: 3 weeks.

Purpose: To provide military attorneys advanced schooling to qualify theh to perform duties as full-time military judges at courts-martial.

Prerequisites: Active duty or reserve component military attorneys. Security clearance required: None. Army officers are selected for attendance by The Judge Advocate General.

Substantive Content: Trial Procedure, substantive military criminal law, defenses, instructions, evidence, current military legal problems, and professional responsibility.

COURSE (5F-F34)

Length: 4-1/2 days.

Purpose: To improve and polish the experienced trial attorneys' defense advocacy skills.

Prerequisites: Active duty military attorney certified as counsel under Article 27b(2), UCMJ, with 6-12 months' experience as a trial attorney and with present or prospective immediate assignment as a defense counsel at the trial level. Security clearance required: None.

Substantive Content: Intensive instruction, keyed to defense counsel's needs, encompass problems from pretrial investigation through appellate review. Issues in evidence, professional responsibility, procedure, trial advocacy and topical aspects are considered.

CRIMINAL LAW NEW DEVELOPMENTS (5F-F35)

Length: 3 days.

Purpose: To provide counsel and criminal law administrators with information regarding recent development and trends in military criminal law. This course is revised annually.

Prerequisites: This course is limited to active duty judge advocates and civilian attorneys who serve as counsel or administer military criminal law in a judge advocate office. Students must not have attended TJAGSA resident criminal law CLE, Basic or Graduate courses, within the 12-month period immediately preceding the date of the course.

Substantive Content: Government/defense counsel post trial duties; speedy trial; pretrial agreements; extraordinary writs; 5th Amendment and Article 31; search and seizure; recent trends in the United States Court of Military Appeals; jurisdiction; witness production; mental responsibility; military corrections; pleadings; developments in substantive law; topical aspects of current military law.

INTERNATIONAL LAW I COURSE (5F-F 40)

Length: 2 weeks.

Purpose: To provide knowledge of the sources, interpretation and application of international law. This course fulfills approximately one-third of the requirements of Phase VI of the nonresident/resident Judge Advocate Officer Graduate Course. It also covers approximately one-third of the materials presented in the USAR School Judge Advocate Officer Graduate Course ADT Phase VI.

Prerequisites: Active duty or reserve component military attorney, 02-04, or appropriate civilian attorney employed by the U.S. Government. Enrollment of active duty personnel is not recommended unless the individual is

working toward completion of the Graduate Course by correspondence. Security clearance required: None.

Substantive Content: The International Legal System: nature, sources and evidences of international law; state rights and responsibilities; recognition; nationality; international agreements; the United Nations and the International Court of Justice; international rules of jurisdiction; status of forces agreements, policies, practices and current developments; foreign claims operations overseas procurement operations; and private aspects of international law.

INTERNATIONAL LAW II COURSE (5F-F41)

Length: 2 weeks.

Purpose: To provide familiarization with the law of war, including customary and conventional (Hague and Geneva Conventions) laws, and the national and international legal rules affecting military operations during times of peace, of armed conflict and of occupation. This course fulfills approximately one-third of the requirements of Phase VI of the nonresident/resident Judge Advocate Officer Graduate Course. It also covers approximately one-third of the materials presented in the USAR School Judge Advocate Officer Graduate Course ADT Phase VI.

Prerequisites: Active duty or reserve component military attorney, 02-04, or appropriate civilian attorney employed by the U.S. Government. Enrollment of active duty personnel is not recommended unless the individual is working toward completion of the Graduate Course by correspondence. Security clearance required: None.

Substantive Content: International customs and treaty rules affecting the conduct of U.S. military forces in military operations in all levels of hostilities; the Hague and Geneva Conventions and the General Protocols, and their application in military operations and

missions, to include problems on handling of war crimes, control of civilians, Article 5 tribunals for the classification of prisoners of war; occupation and civil affairs matters; law of war training and the Code of Conduct.

LAW OF WAR WORKSHOP (5F-F42)

Length: 4-1/2 days.

Purpose: To provide both judge advocate and non-judge advocate officers with basic knowledge of the law of war and of the major changes now impending in this field and of the practical aspects of law of war instruction.

Prerequisites: Active duty or reserve component military attorney or appropriate civilian attorney employed by the Department of Defense, as well as non-attorney officers with command experience who are to be involved in any aspect or level of the law of war training process. Preferably, attorneys and non-attorney officers should attend the workshop as a teaching team. However, organizations wishing to qualify either attorneys or command experienced officers in the law of war training process may send one or a number of unpaired designees. Security clearance required: None.

Substantive Content: International customs and treaty rules affecting the conduct of forces in military operations in all levels of hostilities. the Hague and Geneva Conventions and their application in military operations, to include problems on reporting and investigating war crimes; treatment and control of civilians; treatment and classification of prisoners of war: the substantial change to the law of war impending as a result of recent adoption in Geneva of the Protocols additional to the 1949 Geneva Conventions, including extensive new obligations of commanders and military attorneys. Practical emphasis is given to preparation of lesson plans, methods of instruction, and use of law of war training materials. Participation in team teaching exercises is required.

LEGAL ASPECTS OF TERRORISM (SF-F43)

Length: 2-1/2 days.

Purpose: To provide knowledge of the legal aspects of terrorism and counterterrorism, focusing on the questions confronting military commanders both in the United States and overseas concerning terrorism and the legality of counterterrorism measures.

Prerequisites: Active duty or appropriate civilian attorney employed by the U.S. Government whose present or immediately pending duties include a tangible requirement to advise staff or command on the legal aspects of counterterrorism. Security clearance required: Secret. Attendees will assure that orders reflect clearance status.

Substantive Content: What is the terrorism problem, and what measures are being contemplated to counter it both within and outside the United States; relevant international law and agreements, and national legislation in regard to terrorism; the use of force and limitations on the use of force in foreign countries, legal rules applicable to terrorism during armed conflict; counterterrorism authority of U.S. commanders overseas; the use of force to counter terrorism within the United States both on and off federal installations; the Posse Comitatus Act; relationships within DOD, with federal or local agencies outside DOD, and in regard to other states.

STAFF JUDGE ADVOCATE ORIENTATION COURSE (5F-F52)

Length: 4-1/2 days.

Purpose: To inform newly assigned staff judge advocates of current trends and developments in all areas of military law.

Prerequisites: Active duty field grade Army judge advocate whose actual or anticipated assignment is as a staff judge advocate or deputy staff judge advocate of a command with general court-martial jurisdiction. Security clearance required: None.

Selection for attendance is by the Judge Advocate General.

Substantive Content: Major problem areas and new developments in military justice, administrative and civil law, procurement, and international law.

LAW OFFICE MANAGEMENT (7A-713A)

Length: 4-1/2 days.

Purpose: To provide a working knowledge of the administrative operations of a staff judge advocate office and to provide basic concepts of effective law office management to military attorneys, warrant officers, and senior enlisted personnel.

Prerequisites: Active duty or reserve component JAGC officer, warrant officer or senior enlisted personnel in grade E-8/E-9 in any branch of the armed services. Persons who have completed this course or the Graduate Course within the three-year period preceding the date of this course are not eligible to attend. Officers who have been selected for Graduate Course attendance also are ineligible to attend. Security clearance required: None.

Substantive Content: Management theory including formal and informal organizations, motivation and communication; law office management techniques, including effective management of military and civilian personnel and equipment, and control of budget and office actions.

MILITARY LAWYER'S ASSISTANT COURSE (512-71D/20/50)

Length: 7-1/2 days.

Purpose: The course provides essential train-

ing in the law for legal clerks and civilian employees who work as professional assistants to Army judge advocate attorneys. The course is specifically designed to meet the needs of the Army legal clerk, MOS 71D, for skill level three training in paralegal duties.

Prerequisites: The course is open only to enlisted service members and civilian employees who are serving as paraprofessionals in a military legal office, or whose immediate future assignment entails providing professional assistance to an attorney. Students must have served a minimum of one year in a legal clerk/legal paraprofessional position and must have satisfactorily completed the Law for Legal Clerks Correspondence Course.

Substantive Content: The course focuses on Army legal practice, with emphasis on the client service aspects of legal assistance and criminal law. The course builds on the prerequisite foundation of field experience and correspondence course study. Coverage includes administrative procedures; legal assistance areas of family law, consumer protection, landlord-tenant and taxation; military criminal law areas of crimes and defenses, role of court personnel, jurisdiction, pretrial procedures and evidence; legal research; written communication; interviewing techniques; and professional responsibility.

4. 9th Contract Attorney's Advanced Course. The 9th Contract Attorneys' Advanced Course is scheduled for 8 through 12 January 1979. The theme of the course is "Contract Formation with Emphasis on Socioeconomic Policies and Other Legislation". Included in the course will be discussions of the Federal Acquisition Regulation, the minority business enterprise program, labor surplus set asides, affirmative action programs and the Contract Disputes Act. Guest speakers will include: Mr. Eldon Crowell, Partner, Jones, Day, Reavis, and Pogue, Washington, D.C.; Professor A. E. Dick Howard, University of Virginia School of Law, Charlottesville, Virginia; Mr. William A. Clement, Jr., Small Business Administration, Washington, D.C.; Colonel John D. Slinkard, FAR Project Office, Rosslyn, Virginia; Mrs. Renee C. Sprow, Staff Advisor for Socially and Economically Disadvantaged Business Opportunities, Washington, D.C.; Professor Ralph Nash, The George Washington University, Na-

tional Law Center, Washington, D.C.; Major John S. Miller, USAR, General Services Administration, Washington, D.C.; and Lieutenant Colonel Dale Martin, USAR, Partner, Barokas and Martin, Seattle, Washington.

JUDICIARY NOTES

U.S. Army Judiciary

ADMINISTRATIVE NOTES

1. SJA Review-Policy on Forfeitures

Trial records continue to indicate that Staff Judge Advocate's are not advising convening authorities of paragraph 6-22b, AR 190-47*, in appropriate cases. That regulation provides in pertinent part, "any sentence imposed on an enlisted person that exceeds forfeitures of two-thirds of pay per month for six months should be remitted by the convening authority unless the sentence includes, and the convening authority approves, a bad conduct discharge or dishonorable discharge or confinement unsuspended for the period of such forfeitures." (See Army Lawyer, March & May 1978 for previous guidance.) Recently, The Judge Advocate General was required to take corrective action in three cases: in one, the approved confinement was for nine months, but the period of partial forfeitures (\$50.00) was for twelve months; in another, the adjudged sentence did not adjudge any confinement, but the convening authority approved partial forfeitures (\$150.00) for one

year; in the third case, the approved sentence included confinement for eleven months and total forfeiture for an indefinite period.

*Editor's Note: AR 190-47 was revised 1 Oct 78, effective 1 Nov 78. The cited provision is at para. 6-19f (1) of the revised regulation.

2. Convening Authority's Action

When the approved sentence indicates that the record of trial will be forwarded to the U.S. Army Judiciary for examination under Article 69, UCMJ, the ACTION should include the following provision: "The record of trial is forwarded to The Judge Advocate General of the Army for examination under the provisions of Article 69, Uniform Code of Military Justice."

3. Court-Martial Orders

The second and any subsequent even numbered pages of a court-martial order should be printed head-to-foot to facilitate reading of the order when it is made part of the record. Also, it must be dark enough to be readable.

RESERVE AFFAIRS ITEMS

Reserve Affairs Department, TJAGSA

1. JAGSO Trial Teams

JAGSO Detachment Court-Martial Trial Teams will attend AT 1979 at The Judge Advocate General's School from 18-29 June 1979. Enlisted Court Reporters and Legal Clerks, who are *not* attorneys, will attend AT at the U.S. Army Institute of Administration, Fort

Benjamin Harrison, Indiana, in two-week increments to be announced at a later date.

Requests for unit orders should specify only personnel indicated above.

2. Mobilization Designee Vacancies

A number of installations have recently had

new mobilization designee positions approved and applications may be made for these and other vacancies which now exist. Interested JA Reservists should submit Application for Mobilization Designation Assignment (DA Form 2976) to The Judge Advocate General's School, ATTN: Lieutenant Colonel William Carew, Reserve Affairs Department, Charlottesville, Virginia 22901. Current positions available are as follows:

GRD	PARA	LIN	SEQ	POSITION	AGENCY	CITY
\mathbf{CPT}	50C	04	01	Asst Crim Law Of	USA Forces Cmd	Ft McPherson
MAJ	03B	01	01	Ch, Mil Jus Br	USA Garrison	Ft Devens
MAJ	03C	03C	01	Ch, Leg Asst Off	USA Garrison	Ft Devens
MAJ	03C	02	01	Ch, Admin Law Off	USA Garrison	Ft Devens
MAJ	011	01	01	Mil Af Leg Asst Off	Ft McCoy	Sparta
MAJ	03B	02A	01	Trial Counsel	USA Garrison	Ft Carson
CPT	10D	02A	01	Asst Legal Off	Instl Spt Actv	
0					MDW	Washington
LTC	80B	01A	02	Mil Affrs Off	USA Tng Doctrine	
210					Cmd	Ft Monroe
LTC	80A	01A	01	Mil Justice Off	USA Tng Doctrine	
2.0	0012		-		Cmd	Ft Monroe
MAJ	13	02	01	Patent Lawyer	USA AVRADCOM	St Louis
CPT	08	04	01	Asst JA	172d Inf Bde	Ft Richardson
CPT	08	03A	02	Asst JA	172d Inf Bde	Ft Richardson
CPT	57	01	01	Asst SJA	172d Inf Bde	Ft Richardson
CPT	03B	05	01	Defense Counsel	USA Garrison	Ft Devens
CPT	08	03A	01	Asst JA	172d Inf Bde	Ft Richardson
CPT	57	02A	01	Asst JA	172d Inf Bde	Ft Richardson
GRD	PARA		\mathbf{SEQ}	POSITION	AGENCY	CITY
CPT	03D	01	01	Claims Off	USA Garrison	Ft Devens
CPT	03B	05	02	Def Counsel	USA Garrison	Ft Devens
CPT	03B	03	01	Trial Counsel	USA Garrison	Ft Devens
CPT	03C	06	01	Admin Law Off	USA Garrison	Ft Devens
CPT	08	04	02	Asst JA	172d Inf Bde	Ft Richardson
CPT	03C	04	01	Legal Asst Off	USA Garrison	Ft Devens
CPT	03B	03	02	Trial Counsel	USA Garrison	Ft Devens
LTC	03	03	01	Intl Law Office	USA Spt Cmd HI	Ft Shafter
LTC	50F	03	01	Labor Rel atty	USA Forces Cmd	Ft McPherson
MAJ	05	04	02	Asst Legal Div	Ofc Gen Counsel	Washington

Additional positions will be approved in the near future. Judge advocates wishing to be considered for any available "MOB DES" position should so annotate DA Form 2976.

JAGC Personnel Section

PP&TO, OTJAG

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LIEUTENANT COLONEL

COLONEL

HARVEY, Alton H.

23 Nov 78

ADAMS, Allen D. THORNOCK, John R. 26 Nov 78 4 Nov 78

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CAPTAIN			OMOTIONS	
BROOKS, Waldo W.	23 Nov 78	LIEUTE	CNANT COLONEL	
IST LT KING, Michael K.	24 Sep 77	BEANS, Harry C. 4 OG BERRY, Robert H. 13 OG BROOKSHIRE, Robert 5 OG CARROLL, Bartlett J. 8 OG CRAIG, David B. 9 OG		
CW3		DEKA, David J. 10 Oc FRANKS, Mitchell D. 9 Oc		
GAFFNEY, David A. RAMSEY, Alzie E.	13 Nov 78 13 Nov 78	McNEILL, Robert H. STOCKSTILL, Charles J.		12 Oct 78 8 Oct 78 20 Oct 77
3. ASSIGNMENTS				•
NAME	FRO	M	TO	
	COLON	ELS		
Mullins, William	Claims Off, Ft Mo	eade, MD	SJA, FT Meade, MI	D
	MAJO	RS		
Higley, John	Ft Carson, CO		West Point, NY	
X :	CAPTA	INS		
Bent, David Chapman, Richard	Ft Lee, VA Ft Campbell, KY		OTJAG, WASH, DO USALSA, Bailey Cr VA	
Fugelso, William Palmer, Randall	Ft Ben Harrison, Ft Sam Houston,		Ft Drum, NY USALSA, Bailey Cr VA	rossroads,
Thomas, John VanHooser, Robert	Ft Monmouth, NJ Ft Ord, CA		Ft Sheridan, IL Ft Sheridan, IL	
4. REVOCATION Raymond, William	Korea		Ft Ord, CA	:
5. MILITARY EDUCATION				
a. Completed				
MAJ Lawrence J. Sandell	Command and General Staff College Officer Course (Nonresident)			
b. Selected for Attendance				
MSG William G. Crouch MSG Gunther M. Nothnagel MSG Robert L. Williams	U.S.A. Ser U.S.A. Ser U.S.A. Ser (alternate)	geants Majo	r Academy	
SFC (P) George E. Thorne, Jr.	U.S.A. Serg (nonresiden		r Academy	

CURRENT MATERIALS OF INTEREST

Cooper and Cooke, Military Justice: Marching to a Different Drumbeat, 64 ABAJ 1362, Sept. 1978.

Note, Government Contracts—Power to Contract—Congress did not provide Department of Defense officials with authority under 10 U.S.C. §2386 to expend appropriated funds

for the purchase of unsolicited suggestions, 46 Geo. Wash. L. Rev. 672, May 1978.

Note, The Discretionary-Function Exception to the Federal Tort Claims Act, 42 Albany L. Rev. 721, Summer 1978.

Lyon, The Patient As A Human Test Subject, 6 A.F.J.A.G. Rptr. 4, Oct. 1978.

By Order of the Secretary of the Army:

Official:

J. C. PENNINGTON
Brigadier General, United States Army
The Adjutant General

BERNARD W. ROGERS General, United States Army Chief of Staff